

United States

Circuit Court of Appeals

For the Ninth Circuit.

BANKERS DISCOUNT CORPORATION, a Corporation, and COAST SHIPBUILDING COMPANY, a Corporation,

Appellants,

vs.

STEAMSHIP "EGERIA," Her Masts, Bowsprit, Boats, Anchors, Cables, Rigging, Tackle, Apparel and Furniture, and F. H. RANSON, Trustee, and J. V. MASON, and UNITED SHEET METAL WORKS, a Corporation,

Appellees.

Apostles on Appeal.

Upon Appeal from the United States District Court for the District of Oregon.

FILED

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F. D. MONTGOMERY
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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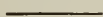
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Names and Addresses of Attorneys of Record.

WINTER & MAGUIRE, Title & Trust Building,
Portland, Oregon, for the Bankers Discount
Corporation, a Corporation, Appellant.

JOSEPH, HANEY & LITTLEFIELD, Corbett
Building, Portland, Oregon, for F. H. Ransom,
Trustee, Libellant, and J. V. Mason, Intervening
Libelants, Appellees.



In the District Court of the United States for the
District of Oregon.

No. A-8865.

In the Matter of the Ship "EGERIA," Her Masts,
Bowsprit, Boats, Anchors, Cables, Rigging,
Tackle, Apparel, and Furniture.

F. H. RANSOM, Trustee,

Libellant.

Caption.

On November 17, 1921, a libel was filed in the
above-entitled court by F. H. Ransom, Trustee, as
libellant, against the ship "Egeria," her masts, bow-
sprit, boats, anchors, cables, rigging, tackle, apparel,
and furniture, and thereupon on said date an order
was made by the Court directing process to issue
for the arrest of the said ship, her tackle, etc., and
directing that notice in the form prescribed by the
order be published.

On November 17, 1921, a warrant of arrest was duly issued, and thereupon the United States Marshal for the District of Oregon seized and arrested the said ship, her tackle, etc. Said ship was not released from arrest nor any security for her release given.

On December 15, 1921, a claim was filed by the Coast Shipbuilding Company as managing owner of the said steamship, and on said date said Coast Shipbuilding Company filed its answer to the libel herein.

On December 15, 1921, a libel in intervention was filed by J. V. Mason, and

On December 15, 1921, upon leave of the Court first had, a libel in intervention was filed by the United Sheet Metal Works and there was filed with the said libel of intervention a stipulation for costs in the sum of \$250.00, with Adolph Groeger as surety.

On December 15, 1921, by leave of Court, a libel in intervention was filed by the Bankers Discount Corporation, [1*] a corporation, and with the said libel a stipulation for costs in the sum of \$250.00, with A. H. Lea as surety thereon.

On March 17, 1922, an answer was filed by the libellant to the intervention of the United Sheet Metal Works.

On March 21, 1922, an answer was filed by the libellant to the intervention of the Bankers Discount Corporation, a corporation.

*Page-number appearing at foot of page of original certified Apostles on Appeal.

On May 18 and 19, 1922, the cause came on for trial before the Court before the Honorable Charles E. Wolverton, District Judge, upon the pleadings and proofs.

On May 18, 1922, said intervenor Bankers Discount Corporation filed a reply to the answer of the libellant.

On June 15, 1922, a stipulation was filed, signed by proctors for libellant, J. V. Mason, intervenor, and Bankers Discount Corporation, intervenor, that the intervention of J. V. Mason be considered as filed by leave of Court and that the allegations therein be deemed denied under oath by intervening libellant Bankers Discount Corporation.

On September 5, 1922, the opinion of the Court was filed.

On October 7, 1922, final decree was entered.

On October 9, 1922, *venditioni exponas* was issued and placed in the hands of the United States Marshal, and thereupon the said steamship "Egeria," her tackle, etc., was sold by the United States Marshal to F. H. Ransom, Trustee, for the sum of \$52,300.

On April 6, 1923, notice of appeal was filed by the intervenor Bankers Discount Corporation.

Portland, Oregon. July 25, 1923.

G. H. MARSH,

Clerk, United States District Court for the District of Oregon. [2]

In the District Court of the United States for the
District of Oregon.

November Term, 1921.

BE IT REMEMBERED, That on the 17th day
of November, 1921, there was duly filed in the Dis-
trict Court of the United States for the District of
Oregon, a libel, in words and figures as follows,
to wit: [3]

In the District Court of the United States for the
District of Oregon.

In the Matter of the Ship "EGERIA," Her Masts,
Bowsprit, Boats, Anchors, Cables, Rigging,
Tackle, Apparel and Furniture.

F. H. RANSOM, Trustee,

Libellant.

Libel.

To the Honorable Charles E. Wolverton and the
Honorable Robert S. Bean, Judges of the
Above-entitled Court:

The libellant, F. H. Ransom, Trustee, brings this,
his libel, against the American vessel "Egeria,"
which is a vessel of the United States, her masts,
bowsprit, boats, anchors, cables, chains, rigging,
tackle, apparel and furniture, and against all those
intervening for their interest in the same in a cause
of suit upon a contract, civil and maritime, and
thereupon alleges:

I.

That libellant, F. H. Ransom, Trustee, is a resi-

dent and inhabitant of the State of Oregon and the District of Oregon, and is a citizen of the State of Oregon and of the United States.

II.

That the vessel "Egeria" is a vessel of the United States, known as a steam screw, of 2360 gross tons of the approximate length of 266.6 feet and 46.1 feet beam, which vessel is duly registered in the American Port of Portland, Oregon, in a permanent register under registry number 10, official number 220478, lettered MBGQ, and the date of which registry is September 21, 1920, and which vessel has at all times since said registration been engaged in coastal trade on the West Coast of the United States, and which vessel is now on the maritime waters of the United States in the Port of Portland, Oregon, and within the jurisdiction of this court.

III.

That said ship "Egeria" is owned by the parties and in the interests as in this paragraph set out, to wit:

Coast Shipbuilding Company 39/100, H. B. Ainsworth 1/100, J. C. Ainsworth 1/100, Boston Packing Co. 1/100, Loren A. Bowman 1/100, C. R. Brinkley 1/200, Sophia Batterson, [4] Trustee, 2/100, Retta Bishop Clarkson 1/350, Columbia Wire and Iron Works 1/100, Eastern and Western Lumber Co. 7/100, Edward Ehrman 1/100, J. K. Gill Co. 1/100, Gillen & Chambers Co. 2/100, Carrie A. Holbrook 1/140, E. H. James 1/100, James B. Kerr 31/700, M. L. Kline Co. 1/100, L. A. Lewis 1/100,

Gus Kuhn 1/100, Meier & Frank Co. 1/100, Olds, Wortman & King 1/100, Oregon Brass Works 1/200, Overmire Steel Construction Co. 8/100, Jaeger Brothers 1/100, David Dahm 1/100, C. A. Park 1/100, Portland Marine Supply Co. 2/100, A. H. Harding 1/200, R. M. Tuttle 1/200, Rasmussen & Co. 1/100, Roberts Bros. 1/100, A. B. & L. M. Scott 1/100, Ben Selling 1/100, C. E. S. Wood 1/100, Paul C. Bates 1/100, G. W. Herron 1/100, L. B. Menefee 12/140, all of Portland, Oregon, and Bird Rose 1/100 of Eugene, Oregon, which are the sole and only owners thereof.

IV.

That Coast Shipbuilding Company is now, and during all the times herein mentioned was, the managing owner of said vessel.

V.

That theretofore, and on the 1st day of March, 1921, in the City of Portland, Oregon, and within the District of Oregon, and within the jurisdiction of this Court, the said Coast Shipbuilding Company, as managing owner of said vessel, and for and on behalf of the owners of said vessel, made, executed and delivered to this libellant, F. H. Ransom, Trustee, a certain promissory note in words and figures as follows, to wit:

\$35,000.00. Portland, Oregon, March 1, 1921.

On or before two years after date, without grace, we promise to pay to the order of F. H. Ransom, Trustee, Thirty-five thousand dollars in Gold Coin of the United States of America, of the present standard value, with interest thereon in like Gold

Coin at the rate of ten per cent per annum from date until paid, for value received. Interest to be paid semi-annually, and if not so paid, the whole sum of both principal and interest to become immediately due and collectible at the option of the holder of this note. And in case suit or action is instituted to collect this note, or any portion thereof, we promise and agree to pay, in addition to the costs and disbursements provided by statute, such additional sum, in like Gold Coin, as the Court may adjudge reasonable, for Attorney's fees to be allowed in said suit or action.

\$7.00 Revenue Stamps cancelled.

S. S. "EGERIA" AND OWNERS.

By COAST SHIPBUILDING COMPANY,

Managing Owner,

By DONALD W. GREEN,

Secretary.

VI.

That, for the purpose of securing the payment of said promissory note, in accordance with the terms thereof, on the 1st day of March, 1921, at Portland, Oregon, and within the jurisdiction of this Court, the said Coast Shipbuilding Company, as managing owner of said vessel, and for and on behalf of the owners thereof, made, executed [5] and delivered to the libellant a certain mortgage whereby it, the said managing owner, bargained, sold and mortgaged said vessel, its masts, bowsprit, boats, anchors, cables, chains, rigging, tackle, apparel and furniture, to this libellant for said purpose, which mortgage was thereafter duly and regularly recorded in

the office of the Collector of Customs for the District of Oregon, at the Port of Portland, Oregon, on the 23d day of March, 1921, in Book G of Mortgages, at Folio 77 thereof, in said office, a copy of which mortgage, marked "A," is attached hereto, referred to and made a part hereof.

VII.

That, pursuant to the terms of said mortgage and said note, there became due and owing thereon from said vessel and her owners, to F. H. Ransom, Trustee, the libellant herein, interest at the rate of ten per cent per annum upon the sum of \$35,000.00 for the period of six months, which interest was due and payable on September 1, 1921, but which interest has not been paid in accordance with the terms of said note or otherwise to the said F. H. Ransom, Trustee, by the said ship "Egeria," or by her owners, which interest is now in default.

VIII.

That it is provided in said note and said mortgage that the interest upon said note, at the rate of ten per cent per annum from date until paid shall be paid semi-annually, and that, if said interest is not so paid, the whole sum of both principal and interest shall become immediately due and collectible at the option of the holder of said note.

IX.

That by reason of the failure of said ship, her managing owner and owners to pay said interest, as provided in said note, there is now due and owing from said ship, her managing owner and owners to the libellant F. H. Ransom, Trustee, the

full sum of \$35,000.00 together with interest thereon at the rate of ten per cent per annum from and after the 1st day of March, 1921. [6]

X.

That libellant herein, F. H. Ransom, Trustee, is now and at all the times since the execution of said note has been the owner and holder thereof, and by reason of the default in the payment of interest upon said note, said libellant has elected and hereby elects to exercise his option and declares the whole sum of the principal and interest of said note due and collectible.

XI.

That it is further provided in said note and in said mortgage that, in case suit or action is instituted to collect said note, or any portion thereof, the makers of said note shall pay, in addition to the costs and disbursements provided by statute, such additional sum as the Court may adjudge reasonable as attorney's fees to be allowed in said suit or action, and that the sum of \$3500.00 is a reasonable sum to be allowed as such attorney's fees.

XII.

That it is provided in and by the terms of said mortgage that the party of the first part named therein, to wit: The ship "Egeria," her owners and managing owner, should, during all of the lifetime of said mortgage, procure the said steam screw, ship or vessel to be insured against loss or damage by fire and against all marine risks and disasters in a good responsible insurance company or companies to be selected and approved by the party of the second

part mentioned in said mortgage, to wit: F. H. Ransom, Trustee, for an amount at least equal to the amount unpaid upon said indebtedness and the interest thereon, and that they, the said ship "Egeria," owners and managing owner should keep such policy or policies renewed from time to time and keep the same valid at all times for such amount, and that they, the said first parties should immediately assign and deliver to the said second party said policy or policies of insurance, having first duly obtained the proper consent of said insurance company or companies to such assignment, and that they, the said first parties, should also promptly deliver to the said second party the renewal certificates of said policies as collateral [7] security for the payment of said indebtedness, and that if said first parties should fail to immediately procure, assign and deliver such policy or policies, or should at any time fail to renew the same, and deliver said renewal certificates thereof to the said party of the second part, or his assigns, then and in such event the said party of the second part is by said mortgage authorized to procure such insurance and keep the same renewed, and such amount as he shall pay therefor shall be deemed and considered an additional indebtedness secured by said mortgage, which said additional indebtedness shall be repaid to said party of the second part on demand, and shall bear interest at ten per cent per annum from the time of such payment until repaid.

XIII.

That the parties of the first part mentioned in

said mortgage, to wit: The ship "Egeria," her owners and managing owner, failed, neglected and refused to keep said ship so insured as in said mortgage provided, and that the libellant herein, in accordance with the terms of said mortgage, secured said insurance upon said vessel at an expense and cost to himself in the sum of \$2,010.26.

XIV.

That libellant herein, F. H. Ransom, Trustee, has demanded repayment to himself of the sum of \$2,010.26, the money expended by him in payment of insurance upon said vessel, in accordance with the terms of said mortgage, from said ship "Egeria," her owners and managing owner, but that said sum has not yet been paid, and is now due and owing from said ship, her owners and managing owner to this libellant, F. H. Ransom, Trustee, and became and is an indebtedness secured by said mortgage.

WHEREFORE, libellant prays that process in due form of law, in accordance with the practice of this Court, issue against said ship "Egeria," her masts, bowsprit, boats, anchors, cables, chains, rigging, tackle, apparel and furniture and that she may be condemned and sold to answer for the moneys due as herein alleged in this libel or in any amendment thereof, and that this Court will hear the evidence which libellant will adduce in support of the allegations [8] of the libel, and will enter a decree in favor of the libellant in the sum of \$35,000.-00, together with interest thereon at the rate of ten per cent per annum from and after March 1, 1921,

and the further sum of \$2,010.26, together with interest thereon at the rate of ten per cent from and after — 1, 1921, and the further sum of \$3,500.00 as an attorney's fee herein, in order that said sums may be paid and satisfied out of the proceeds of the sale of said ship "Egeria," together with costs of libellant, and otherwise let right and justice administer in the premises.

JOSEPH, HANEY & LITTLEFIELD,
Proctors for Libellant.
F. H. RANSOM,
Trustee.

United States of America,
District of Oregon,—ss.

I, F. H. Ransom, Trustee, being first duly sworn, depose and say that I am the libellant hereinabove named; that I have read the foregoing libel, know the contents thereof, and that the same is true as I verily believe.

F. H. RANSOM,
Trustee.

Subscribed and sworn to before me this 17th day of November, 1921.

[Notarial Seal] B. E. HANEY,
Notary Public for Oregon.

My commission expires 9/ 7/ 24. [9]

Copy of original Mortgage held by F. H. Ransom,
Trustee.

DEPARTMENT OF COMMERCE.

Bureau of Navigation.

Upon receipt of this form by the Collector, duly executed, the time when received will be at once noted thereon, in its proper place (page 3), and record will be made as soon thereafter as practicable.

MORTGAGE OF REGISTERED VESSEL.

From COAST SHIPBUILDING COMPANY,
H. B. Ainsworth and all other owners of
steam screw "Egeria" to F. H. Ransom, Trustee. To all to whom these presents shall come,
GREETING:

Know ye, that Coast Shipbuilding Company 39/100, H. B. Ainsworth 1/100, J. C. Ainsworth 1/100, Boston Packing Co. 1/100, Loren A. Bowman 1/100, C. R. Brinkley 1/200, Sophia Batterson, Trustee 2/100, Retta Bishop Clarkson 1/350, Columbia Wire and Iron Works 1/100, Eastern and Western Lumber Co. 7/100, Edward Ehrman 1/100, J. K. Gill Co. 1/100, Gillen & Chambers Co. 2/100, Carrie A. Hollbrook 1/140, E. H. James 1/100, James B. Kerr 31/700, M. L. Kline Co. 1/100, L. A. Lewis 1/100, Gus Kuhn 1/100, Meier & Frank Co. 1/100, Olds, Wortman & King 1/100, Oregon Brass Works 1/200, Overmire Steel Construction Co. 8/100, Jaeger Brothers 1/100, David Dahm 1/100, C. A. Park 1/100, Portland Marine Supply Co. 2/100, A. H.

Harding 1/200, R. M. Tuttle 1/200, Rasmussen & Co. 1/100, Roberts Bros. 1/100, A. B. & L. M. Scott 1/100, Ben Selling 1/100, C. E. S. Wood 1/100, Paul C. Bates 1/100, G. W. Herron 1/100, L. B. Menefee 12/140, all of the City of Portland, State of Oregon, and Bird Rose 1/100 of the city of Eugene, State of Oregon, and sole owners

KNOW YE, that (insert names of mortgagors) of the — of — in the State of and — owner of the steam screw or vessel [10] called the "Egeria," of the burden of 1379 net register tons, or thereabouts, of the first part, being justly indebted to F. H. Ransom, Trustee, of Portland, Oregon, in the State of Oregon, of the second part, in the sum of Thirty-five Thousand Dollars (\$35,000.00) Dollars, upon a note for \$35,000 dated March 1, 1921, due on or before two years after date with interest at ten per cent (10%) per annum, payable semiannually has, for the purpose of securing the payment of the said debts, and the interest thereon, bargained, sold, and mortgaged and by these presents do bargain, sell, and mortgage unto the said party of the second part, his executors, administrators, and assigns, all of said steam screw or vessel, together with all of the masts, bowsprit, boats, anchors, cables, chains, tackle, apparel; furniture, and all other necessities thereunto appertaining and belonging. The certificate of the last register of the said steam screw or vessel is in the words and figures following, to wit:

Permanent	Official
Register	Number
No. 10	220,478
	Letters
	MBGQ

IN PURSUANCE OF CHAPTER ONE,
TITLE XLVIII, "Regulation of Com-
merce and Navigation," Revised
Statutes of the United States.

D. W. Green, Secretary, Coast Shipbuilding Com-
pany, Managing Owner, of Portland, Oregon, hav-
ing taken and subscribed the oath required by law,
and having sworn that

Coast Shipbuilding Company 39/100, H. B. Ains-
worth 1/100, J. C. Ainsworth 1/100, Boston Packing
Co. 1/100, Loren A. Bowman 1/100, C. R. Brinkley
1/200, Sophia Batterson, Trustee 2/100, Retta
Bishop Clarkson 1/350, Columbia Wire and Iron
Works 1/100, Eastern and Western Lumber Co.
7/100, Edward Ehrman 1/100, J. K. Gill Co. 1/100,
Gillen & Chambers Co. 2/100, Carrie A. Hollbrook
1/140, E. H. James 1/100, James B. Kerr 31/700,
M. L. Kline Co. 1/100, L. A. Lewis 1/100, Gus Kuhn
1/100, Meier & Frank Co. 1/100, Olds, Wortman
[11] & King 1/100, Oregon Brass Works 1/200,
Overmire Steel Construction Co. 8/100, Jaeger
Brothers 1/100, David Dahm 1/100, C. A. Park
1/100, Portland Marine Supply Co. 2/100, A. H.
Harding 1/200, R. M. Tuttle 1/200, Rasmussen &
Co. 1/100, Roberts Bros. 1/100, A. B. & L. M. Scott
1/100, Ben Selling 1/100, C. E. S. Wood 1/100,
Paul C. Bates 1/100, G. W. Herron 1/100, L. B.

Menefee 12/140, all of Portland, Oregon, and Bird Rose 1/100 of Eugene, Oregon, are the only owners, of the vessel called the "Egeria," of Portland, Oregon, whereof A. A. Sawyer is at present master, and is a citizen of the United States, and that the said vessel was built in the year 1920, at Portland, Oregon, of wood, as appears by P. R. #7, issued at Portland, Oregon, Sept. 9, 1920, now surrendered: Ownership changed and said Register having certified that the said vessel is a steam screw; that she has 1 deck, 2 masts, a sharp head, and an elliptical stern; that her register length is 266.6 feet; her register breadth 46.1 feet; her register depth 24 feet; her height — feet; that she measures as follows:

		Tons	100ths
Capacity under tonnage deck		2064	46
Capacity between decks above tonnage deck			
Capacity of inclosure on the upper deck, viz.: Fore-castle 36.32; bridge —; poop 131.69; break —;			
houses-round 116.49; side —; chart —; radio —; excess hatchways 11.78; light and air —;		296	28
Gross Tonnage		2360	74
Deductions Under Section 4153, Revised Statutes, as amended:			
Crew space	146.71	Master's cabin	23.85
Steering gear		Anchor gear	21.18
		Boatswain's stores	22.66
Chart house	6.13	Donkey engine and boiler	
		Radio house	5.15
Storage of Sails		Propelling power (actual space 370.87), 32%	755.43
Total deductions		981	11
Net tonnage		1379	—

The following described spaces, and no others, have been omitted viz.: Forepeak used for water ballast, aftpeak used for water ballast companion, skylights .26, open bridge, open poop ; open shelter deck 2.16 ; steering gear 22.66; Other Mach. Spaces 2.49 donkey engine and boiler ; light and air 64.90; wheelhouse 6.83, galley 10.29, condenser water-closets 15.00, cabins open pasway 3.16 and the said vessel has been duly registered at this Port.

GIVEN under my hand and seal, at the Port of Portland, Oregon, this 21st day of September, in the year one thousand nine hundred and twenty.

None

L. A. PIKE,

Naval Officer (Seal)

Special Deputy Collector of Customs
(Seal)

EUGENE TYLER CHAMBERLAIN,

Commissioner of Navigation (Seal)

TO HAVE AND TO HOLD the said Steam Screw or vessel and all the other before-mentioned appurtenances unto him and the said F. H. Ransom, Trustee, and to his executors, administrators, and assigns, to the sole and only proper use, benefit and behoof of — the said F. H. Ransom, Trustee, and to his executors, administrators and assigns, forever:

PROVIDED ALWAYS, and the condition of these presents is such, that if the said parties of the first part, their successors, executors or admin-

istrators, shall pay or cause to be paid, to the said party of the second part, his executors, administrators, or assigns, the debt aforesaid, with the interest thereon, at the time or times and in the manner following, to wit: according to the tenor of a note for \$35,000.00 dated March 1, 1921, in form and figures substantially as follows, to wit:

\$35,000.00 Portland, Oregon, March 1, 1921.

On or before two years after date, without grace, we promise to pay to the order of F. H. RANSOM, TRUSTEE, Thirty-five Thousand Dollars in Gold Coin of the United States of America, of the present [13] standard value, with interest thereon in like Gold Coin at the rate of ten per cent per annum from date until paid, for value received. Interest to be paid semiannually, and if not so paid, the whole sum of both principal and interest to become immediately due and collectible at the option of the holder of this note. And in case suit or action is instituted to collect this note, or any portion thereof, we promise and agree to pay, in addition to the costs and disbursements provided by statute, such additional sum, in like Gold Coin, as the Court may adjudge reasonable, for attorney's fees to be allowed in said suit or action.

S. S. "EGERIA" AND OWNERS.

\$7.00 Revenue stamps cancelled by

COAST SHIPBUILDING COMPANY,

Managing Owner,

By Donald W. Green,

Secretary,

then these presents shall be void and of no effect, subject, however, to the provisions hereinafter contained; and the said parties of the first part hereby agree to pay the debt aforesaid, and interest thereon, and to fulfill and perform each and every one of the covenants and conditions herein contained.

BUT IF DEFAULT be made in such payments, or in any one of such payments, or if default be made in the prompt and faithful performance of any of the covenants herein contained, or if the said part of the second part shall at any time deem himself in danger of losing said debt, or any part thereof, by delaying the collection thereof until the expiration of the time above limited for the payment thereof, or if said parties of the first part shall sell or attempt to sell said property, or any part thereof, or if the same shall be levied upon or taken by virtue of any attachment or execution against said first parties, or if said first parties shall suffer and permit said vessel to be run in debt to an amount exceeding in the aggregate the sum of exclusive of this [14] obligation Sixty Thousand and no/100 (\$60,000.00) dollars, or if the said first part shall negligently or willfully permit said property to waste, or be damaged or destroyed, said party of the second part is hereby authorized to take possession of said goods, chattels, and personal property at any time, wherever found, either before or after the expiration of the time aforesaid, and to sell and convey the same, or so much thereof as may be necessary to satisfy the said debt, interest, and reasonable expenses, after

first giving a notice of twenty (20) days, to be given by publication in some newspaper published in the City of Portland, State of Oregon, and to retain the same out of the proceeds of such sale; the surplus (if any) to belong and to be returned to said parties of the first part.

And it is AGREED that on such sale the parties of the first part, their executors, administrators, successors or assigns, may become the purchasers.

And the said part of the first part do further covenant and agree, to and with the said party of the second part, his executors, administrators, and assigns, that they will immediately procure said steam screw or vessel to be insured against loss or damage by fire, and against all marine risks and disasters, in some good and responsible insurance company or companies, to be selected and approved by the said party of the second part, for an amount at least equal to the amount which shall from time to time remain unpaid upon the said indebtedness and interest thereon, and that they will keep such policy or policies renewed from time to time, and keep the same valid at all times for the amount aforesaid; that they will do, suffer, or permit to be done, no act whereby said insurance would be liable to be vitiated or forfeited, and that they will immediately assign and deliver to said second [15] party said policy or policies of insurance, having first duly obtained the proper consent of the insurance company or companies to such assignment, and that they will also promptly deliver to said second party the renewal certificate of said

policies as a collateral security for the payment of said indebtedness. And if said first parties shall fail to immediately procure, assign, and deliver such policy or policies as aforesaid, or shall at any time fail to immediately renew the same, and deliver the renewal certificates as aforesaid, the said party of the second part, his executors, administrators, or assigns, is hereby authorized to procure said steam screw or vessel to be insured as aforesaid, and to keep the policy or policies renewed; and the amount which he has to pay therefor shall be considered, and is hereby declared to be, an additional indebtedness hereby intended to be secured, and shall be repaid to said party of the second part, his executors, administrators, or assigns, on demand, and shall bear interest at ten (10) per cent from the time of such payment until repaid.

AND IT IS HEREBY PROVIDED, that it shall be lawful for said first parties, their executors, successors and administrators, to retain possession of the property hereby mortgaged, and at their own expense to use and enjoy the same until said indebtedness shall become due, unless said second party should at any earlier date declare this mortgage forfeited for nonperformance of any of the covenants herein contained, or by virtue of any authority hereby conferred on said second party.

IN TESTIMONY WHEREOF, the said Coast Shipbuilding Company 39/100, H. B. Ainsworth 1/100, J. C. Ainsworth 1/100, Boston Packing Co. 1/100, Loren A. Bowman 1/100, C. R. Brinkley 1/200, Sophia Batterson, Trustee 2/100, Retta

Bishop Clarkson 1/350, Columbia Wire and Iron Works 1/100, Eastern and Western Lumber Co. [16] 7/100, Edward Ehrman 1/100, J. K. Gill Co. 1/100, Gillen & Chambers Co. 2/100, Carrie A. Hollbrook 1/140, E. H. James 1/100, James B. Kerr 31/700, M. L. Kline Co. 1/100, L. A. Lewis 1/100, Gus Kuhn 1/100, Meier & Frank Co. 1/100, Olds, Wortman & King 1/100, Oregon Brass Works 1/200, Overmire Steel Construction Co. 8/100, Jaeger Brothers 1/100, David Dahm 1/100, C. A. Park 1/100, Portland Marine Supply Co. 2/100, A. H. Harding 1/200, R. M. Tuttle 1/200, Rasmussen & Co. 1/100, Roberts Bros. 1/100, A. B. & L. M. Scott 1/100, Ben Selling 1/100, C. E. S. Wood 1/100, Paul C. Bates 1/100, G. W. Herron 1/100, L. B. Menefee 12/140, all of Portland, Oregon, and Bird Rose 1/100, of Eugene, Oregon, owners of the steam screw "Egeria," have hereunto set their hands this first day of March, in the year one thousand nine hundred and twenty-one.

Signed and delivered in

the presence of:

Charles E. McCulloch

Robt. B. Kuykendall

Coast shipbuilding Company 39/100, H. B. Ainsworth 1/100, J. C. Ainsworth 1/100, Boston Packing Co. 1/100, Loren A. Bowman 1/100, C. R. Brinkley 1/200, Sophia Batterson, Trustee, 2/100, Retta Bishop Clarkson 1/350, Columbia Wire and Iron Works 1/100,

Eastern and Western
Lumber Co. 7/100, Ed-
ward Ehrman 1/100, J.
K. Gill Co. 1/100, Gillen
& Chambers Co. 2/100,
Carrie Hollbrook 1/140,
E. H. James 1/100, James
B. Kerr 31/700, M. L.
Kline Co. 1/100, L. A.
Lewis 1/100, Gus Kuhn
1/100, Meier & Frank Co.
1/100, Olds, Wortman &
King 1/100, Oregon Brass
Works 1/200, Overmire
Steel Construction Co.
8/100, Jaeger Brothers
1/100, David Dahm 1/100,
C. A. Park 1/100, Port-
land Marine Supply Co.
2/100, A. H. Harding
1/200, R. M. Tuttle 1/200,
Rasmussen & Co. 1/100,
Roberts Bros. 1/100, A.
B. & L. M. Scott 1/100,
Ben Selling 1/100, C. E.
S. Wood 1/100, Paul C.
Bates 1/100, G. W. Her-
ron 1/100, L. B. Menefee
12/140, all of Portland,
Oregon, and Bird Rose

1/100 of Eugene, Oregon,
Owners of the S. S.
“EGERIA.”

By

COAST SHIPBUILDING CO. MANAG-
ING OWNER, :

By

Coast S. B. Co.
Seal affixed.

Donald W. Green,
Secretary. [17]

State of Oregon,
County of Multnomah,—ss.

On this 1st day of March, 1921, before me appeared Donald W. Green, to me personally known, who, being duly sworn, did say that he is secretary of Coast Shipbuilding Company, Managing Owner of S. S. “Egeria,” and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation as Managing Owner of said S. S. “Egeria” by authority of its board of directors, and said Donald W. Green acknowledged said instrument to be the free act and deed of said corporation and of the Owners of the S. S. “Egeria” by virtue of its appointment as Managing Owner.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my official seal this the day and year first in this, my certificate written.

[Notary Seal Affixed]

ROBT. B. KUYKENDALL,

Notary Public for Oregon.

My commission expires Sept. 1, 1924.

Received for record on the — day of March 23, 1921, A. D., at — o'clock, — M.

COLLECTOR OF CUSTOMS. [18]

Cat. No. 1348. Department of Commerce. Bureau of Navigation. Mortgage on S/S "Egeria" from owners S/S "Egeria" to F. H. Ransom, Trustee. Office of Collector of Customs, District of Oregon, Port of Portland, Oregon.

Received for record on the 23d day of March, A. D. 1921, at 4:00 o'clock P. M., and recorded in Liber G. of Mortgages, folio 77, etc.

L. A. PIKE,
Collector of Customs.

Spl. D. F.

Libel Filed November 17, 1921. G. H. Marsh,
Clerk. [19]

AND AFTERWARDS, to wit, on the 15th day of December, 1921, there was duly filed in said court a libel of J. V. Mason in intervention in words and figures as follows, to wit: [20]

In the District Court of the United States for the
District of Oregon.

IN ADMIRALTY.

In the Matter of the Ship "EGERIA" Her Masts,
Bowsprit, Boats, Anchors, Cables, Rigging,
Tackle, Apparel and Furniture.

Petition in Intervention.

Libel of Claimant J. V. Mason.

To the Honorable Chas. A. Wolverton and Robt. S. Bean, Judges of the Above-entitled Court:

The libellant and intervenor, J. V. Mason makes this his libel against the American vessel "Egeria," which is a vessel of the United States, her masts, bowsprit, boats, anchors, cables, chains, rigging, tackle, apparel and furniture, and against all those intervening for their interest in the same in a cause of suit upon a contract, civil and maritime, and thereupon alleges:

I.

That libellant, J. V. Mason, is a resident and inhabitant of the State of Oregon and the District of Oregon, and is a citizen of the State of Oregon and of the United States.

II.

That the vessel "Egeria" is a vessel of the United States known as a steam screw, of 2360 gross tons of the approximate length of 266.6 and 46.1 feet beam, which vessel is duly registered in the American port of Portland, Oregon, in a permanent register under registry number 10, official number 220,-478, lettered MBGQ, and the date of which registry is September 21, 1920, and which vessel has at all times since said registration been engaged in coastal trade on the West Coast of the United States, and which vessel is now on the maritime waters of the

United States in the port of Portland, Oregon, and within the [21] jurisdiction of this Court.

III.

That said ship "Egeria" is owned by the parties and in the interests as in this paragraph set out, to wit:

Coast Shipbuilding Company 39/100, H. B. Ainsworth 1/100, J. C. Ainsworth 1/100, Boston Packing Co. 1/100, Loren A. Bowman 1/100, C. R. Brinkley 1/200, Sophia Batterson, Trustee, 2/100, Retta Bishop Clarkson 1/350, Columbia Wire and Iron Works 1/100, Eastern and Western Lumber Co. 7/100, Edward Ehrman 1/100, J. K. Gill Co. 1/100, Gillen & Chambers Co. 2/100, Carrie A. Hollbrook 1/140, E. H. James 1/100, James B. Kerr 31/700, M. L. Kline Co. 1/100, L. A. Lewis 1/100, Gus Kuhn, 1/100, Meier & Frank Co. 1/100, Olds, Wortman & King 1/100, Oregon Brass Works 1/200, Overmire Steel Construction Co. 8/100, Jaeger Brothers 1/100, David Dahm 1/100, C. A. Park 1/100, Portland Marine Supply Co. 2/100, A. H. Harding 1/200, R. M. Tuttle 1/200, Rasmussen & Co. 1/100, Roberts Bros. 1/100, A. B. & L. M. Scott 1/100, Ben Selling 1/100, C. E. S. Wood 1/100, Paul C. Bates 1/100, G. W. Herron 1/100, L. B. Menefee 12/140, all of Portland, Oregon, and Bird Rose 1/100, of Eugene, Oregon.

Which are the sole and only owners thereof.

IV.

That the Coast Shipbuilding Company is now, and during all the times herein mentioned was, the managing owner of said vessel.

V.

That heretofore and on the 18th day of October, 1921, one C. J. Swenson was the master of said ship and as such master advanced and paid for and on behalf of said ship at the port of San Pedro in the State of California, United States of America, certain charges consisting of wages for officers and crew, repair bills incurred for work upon said ship and other incidental expenses for moneys necessary to move said ship from said port of San Pedro and other moneys on account of light-erage, portage and moving said ship in the sum total of \$6,653.86. That said money so expended by said captain are itemized and set forth upon the sheet marked "A" attached hereto and made a part hereof.

VI.

That thereafter and on the 26th day of October, 1921, the said C. J. Swenson, master of said ship, sold and assigned said [22] claim against said ship in the amount of \$6,653.86 to libellant, J. V. Mason, who at all times since said date has been and now is the owner and holder thereof.

VII.

That there is now due and owing from said ship, her owners and managing owner, to this libellant, the full sum of \$6,653.86.

For a second and additional libel, libellant J. V. Mason realleges all of the allegations contained in Paragraphs I to IV inclusive as alleged in libellant's first libel herein with the same force and effect as if the same were fully set forth herein.

II.

That libellant J. V. Mason between the 1st day of November, 1921, and the 20th day of November, 1921, at the request of the mortgagee, F. H. Ransom, Trustee, and with the knowledge and consent of the managing owner of said ship, advanced moneys for and on behalf of said ship and in payment of claims against said ship incurred for wharfage, towing, lighterage and supplies furnished to and for said ship, the full sum of \$645.51.

III.

That said moneys so expended were necessarily expended so that ship could be moved to her home port, to wit: Portland, Oregon, and that said ship, her owners and managing owner thereby became and are indebted to this libellant in the full sum of \$645.51.

For a third and further libel herein libellant J. V. Mason realleges: [23]

I.

All of the allegations contained in Paragraphs I to IV inclusive as set forth in this libellant's first libel contained herein with all the force and effect as if the same were herein set forth.

II.

That on December 12, 1921, the said ship "Egeria" was indebted to the port of Portland, a municipal corporation, in the sum of \$82.40 for services rendered to and upon said ship to the Columbia bar pilots in the sum of \$42.26, and to the Columbia River pilots in the sum of \$65.00, and to Geo. Hawkins, a watchman employed upon said ship in the

sum of \$200.00, and to the Portland Lumber Company, a corporation, for wharfage in the sum of \$100.00, and to the Commissioner of Public Docks of the city of Portland, a municipal corporation, in the sum of \$48.24, and to the St. Helens Ship Company, a corporation, in the sum of \$100.00, and to the United States National Bank, a corporation, in the sum of \$45.20, and to the State Laundry, a corporation, in the sum of \$38.65, and to the Commercial Advertising Company in the sum of \$28.38, and to the Commercial Advertising Company in the sum of \$20.66, and to the port of Portland in the further sum of \$82.40, or in all a total of \$856.13.

III.

That said claimants in the last paragraph herein set forth and each of them have sold and assigned their claims as in said paragraph set forth, to this libellant who is now the owner and holder thereof and that said claims and each of them constitute an indebtedness against said vessel, her owners and managing owner in the sums therein set forth, said indebtedness [24] having been incurred by said vessel in the necessary operation thereof and for necessary work done upon said vessel and for necessary supplies furnished thereto.

IV.

That said vessel, the owners and managing owner became thereby and are indebted to this libellant in the sum of \$856.13.

WHEREFORE, libelant, J. V. Mason, prays that he be allowed to intervene herein, that his claims

as set forth herein be considered by this Court in this proceeding, that process in accordance with the practice of this Court issue against said ship, her masts, bowsprit, boats, anchors, cables, chains, rigging, tackle, apparel and furniture, and that said ship, her masts, bowsprit, boats, anchors, cables, chains, rigging, tackle, apparel and furniture, be condemned and sold to answer for the moneys as herein alleged in this libel or any amendment thereof and that this Court will hear the evidence which said libelant will adduce in support of the allegations hereof and will enter a decree in favor of this libelant in the sum of \$8,155.50, together with interest thereon at the rate of 6% per annum from and after December 1st, 1921, in order that said sums be paid and satisfied out of the proceeds of said ship "Egeria" together with the costs of this libelant, and otherwise let right and justice administer in these premises.

JOSEPH, HANEY & LITTLEFIELD,

Proctors for Libelant, J. V. Mason.

United States of America,

District of Oregon,—ss.

I, J. V. Mason, being first duly sworn, depose and [25] say, That I am the libelant hereinabove named; that I have read the foregoing libel, know the contents thereof, and that the same is true as I verily believe.

J. V. MASON.

Subscribed and sworn to before me this 14th day
of December, 1921.

[Seal]

B. E. HANEY,

Notary Public for Oregon.

Commission expires 9-7-24.

“A.”

MASTER'S ACCOUNT.

Oct. 18	Wages paid crew at San Pedro.....	\$2,878.24
Oct. 18	Wages paid crew at San Pedro.....	1,123.93
	Outer Harbor & Dock & Wharf Co...	71.70
	Banning Co.....	22.20
	R. C. Griffith Co. 3 vouchers.....	322.24
	Chas. E. Perham.....	30.00
	J. J. Meany Longshore Labor.....	549.49
	Wilmington Transportation Co.....	40.00
	John J. Monahan Attorney fee.....	312.82
	Avon Transportation Co.....	20.00
	City of Los Angeles.....	68.58
	Homers Music & Picture Shop.	1.75
Oct. 26	Portage account at Portland.....	1,008.50
	Due Master as per statement of Coast Shipbuilding Co.....	204.41
		<hr/>
		\$6,653.86
	Owed by Master.....	34.00

Filed December 15, 1921. G. H. Marsh, Clerk.

AND AFTERWARDS, to wit, on the 15th day of December, 1921, there was duly filed in said court, a libel of the Bankers Discount Corporation in intervention, in words and figures as follows, to wit: [27]

In the District Court of the United States for the
District of Oregon.

IN ADMIRALTY.

Suit No.

F. H. RANSOM, Trustee,

Libelant,

vs.

The Steamship "EGERIA," Her Masts, Bowsprit,
Boats, Anchors, Cables, Riggings, Tackle,
Apparel and Furniture.

THE BANKERS DISCOUNT CORPORATION,
a Corporation,

Intervening Libelant.

Libel in Intervention.

To the District Court of the United States for the
District of Oregon, and to the Honorable
Charles E. Wolverton and the Honorable Rob-
ert S. Bean, Judges of said Court, Sitting in
Admiralty.

The petition of the Bankers Discount Corpora-
tion, a corporation, for leave to prosecute its libel

in intervention in a cause of action, civil and maritime, to recover for labor done, material and machinery furnished in the building, repairing, fitting, furnishing, and equipping said ship against the said ship "Egeria," her masts, bowsprit, boats, anchor, cables, chains, rigging, tackle, apparel and furniture and against all persons lawfully intervening for their interest, alleges and shows as follows, to wit:

I.

That said ship "Egeria" has been attached by the marshal of the above district upon process to wit, arrest and monition, issued out of the above-entitled court upon the libel of said F. H. Ransom, Trustee, libellant, and that she still remains in the custody of the marshal of the above-entitled court and district within the jurisdiction of the above-entitled court.

II.

That at all times hereinafter mentioned, the Bankers [28] Discount Corporation, was, ever since has been, and now is a corporation duly organized and existing under, and by virtue of the laws of the State of Oregon, having its principal place of business in the city of Portland, Multnomah County, Oregon, within the District of Oregon.

III.

That the vessel "Egeria" is a vessel of the United States, known as a steam screw, of 2360 gross tons of the approximate length of 266.6 and 46.1 feet beam, which vessel is duly registered in the Ameri-

can Port of Portland, Oregon, and which vessel is now on the maritime waters of the United States in the Port of Portland, Oregon, and within the jurisdiction of this Court.

IV.

That said ship "Egeria" is owned by the parties and in the interests as in this paragraph set out, to wit:

Coast Shipbuilding Company 39/100, H. B. Ainsworth 1/100, J. C. Ainsworth 1/100, Boston Packing Co. 1/100, Loren A. Bowman 1/100, C. R. Brinkley 1/200, Sophia Batterson, Trustee, 2/100, Retta Bishop Clarkson, 1/350, Columbia Wire and Iron Works 1/100, Eastern and Western Lumber Co. 7/100, Edward Ehrman 1/100, J. K. Gill Co. 1/100, Gillen & Chambers Co. 2/100, Carrie A. Holbrook 1/140, E. H. James, 1/100, James B. Kerr 31/700, M. L. Kline Co. 1/100, L. A. Lewis 1/100, Gus Kuhn 1/100, Meier & Frank Co. 1/100, Olds, Wortman & King 1/100, Oregon Brass Works 1/200, Overmire Steel Construction Co. 8/100, Jaeger Brothers 1/100, David Dahm 1/100, C. A. Park 1/100, Portland Marine Supply Co. 2/100, A. H. Harding 1/200, R. M. Tuttle 1/200, Rasmussen & Co. 1/100, Roberts Bros. 1/100, A. B. and L. M. Scott 1/100, Ben Selling 1/100, C. E. S. Wood, 1/100, Paul C. Bates 1/100, G. W. Heron 1/100, L. B. Menefee 12/140, all of Portland, Oregon, and Bird Rose 1/100 of Eugene, Oregon,

who are the sole and only owners thereof.

V.

That heretofore and on or about the — day of —, [29] A. D. 1920, in the city of Portland and within the District of Oregon, and within the jurisdiction of this court, the owners of said vessel as above named made and entered into a contract with the Coast Shipbuilding Company wherein and whereby said Coast Shipbuilding Company agreed to and subsequently in pursuance thereof, did furnish to the said steamship "Egeria" and to the owners thereof labor, machinery and materials necessary for the building, repairing, fitting, furnishing, and equipping of said vessel the particulars of which labor, materials and machinery, will fully appear in the account hereto annexed, marked Exhibit "A" and made a part hereof amounting in the whole to the sum of \$398,856.99, no part of which sum has been paid except the sum of \$350,000, leaving a balance unpaid of \$48,856.99 together with interest thereon for which this intervening libelant claims a lien.

VI.

That prior to the filing of this petition, the Coast Shipbuilding Company for a good and valuable consideration, sold and duly, transferred and assigned to the Bankers Discount Corporation, a corporation, the intervening libelant herein, the said claim against the said ship and her owners and in favor of said Coast Shipbuilding Company, and this intervening libelant is now the legal holder and owner thereof.

VII.

That there is now due and owing to this intervening libelant the full and true sum of \$48,856.99 together with interest thereon from the date this cause of action accrued, to wit: on or about the — day of —, A. D. 1921, together with the further sum of \$5000.00, which this petition alleges [30] to be a reasonable attorneys' fees for which intervening libelant claims a lien, which lien is a first and superior lien against said ship "Egeria," her masts, bowsprit, boats, anchor, cables, chains, rigging, tackle, apparel and furniture, and against the owners thereof, and is a first and superior lien to the claim of F. G. Ransom, Trustee, Libellant herein.

VIII.

That all and singular the promises are true, and within the admiralty and maritime jurisdiction of the United States of America and of this Honorable Court, and the said ship "Egeria" is now in the port of Portland within the District of Oregon aforesaid, in the custody of the marshal of the United States as hereinbefore alleged.

Wherefore, this plaintiff prays that it may be allowed to intervene in said cause to recover the amount due for labor, material and machinery, furnished under said contract for the building, repairing, fitting and furnishing, and equipping said ship "Egeria" as enumerated in the said Exhibit "A" hereto attached, and that process of the attachment in due form of law according to the Court of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the said steamer

“Egeria,” her masts, bowsprit, boats, anchors, cables, chains, rigging, tackle, apparel and furniture, and that her said owners and all other persons having or claiming to have any right, title, or interest therein, may be cited to appear and answer all and singular the matters so articulately propounded, and that this Court will hear the evidence which intervening libelant will adduce in support of the allegations of his libel herein, and that this Honorable Court would be pleased to pronounce for the claim aforesaid with interest, attorneys’ fees to [31] be fixed by the Court, and the costs herein expended and that it is a first and superior lien upon the said ship, and that the said ship “Egeria,” her masts, bowsprit, boats, anchor, cables, chains, rigging, tackle, apparel and furniture may be condemned and sold to pay the same; and that this intervening libelant may have such other and further relief as in law and justice it may be entitled to receive.

BANKERS DISCOUNT CORPORATION.

By S. F. Wilson,
Its Vice-President.

WINTER & MAGUIRE,
Proctors for Intervening Libelant.

United States of America,
District of Oregon,—ss.

I, S. F. Wilson, being first duly sworn, upon oath depose and say, that I am the vice-president of the Bankers Discount Corporation, a corporation, the intervening libelants, herein, and I make this verification for and upon its behalf as the vice-president of said corporation, and that the seal hereto affixed

is the corporate seal of said corporation and is duly affixed by authority of said corporation; I have read the foregoing libel in intervention and know the contents thereof and that the matters stated in the foregoing libel in intervention, so far as they are therein stated as of my own knowledge, are true and so far as they are therein stated as of information derived from others I believe them to be true.

S. F. WILSON.

Subscribed and sworn to before me, a notary public, this 14th day of December, A. D. 1921.

[Seal]

HAZEL M. BRUNS,

Notary Public for the State of Oregon.

My commission expires Sept. 3, 1922. [32]

Exhibit "A."**STATEMENT OF COST OF STEAMSHIP
"EGERIA."**

Hull, engines, boilers and miscellaneous material		
from Emergency Fleet Corporation		\$147,747.96
210,480 B. M. Fir @ \$30.00 per M	9471.60	
4,800 " " Iron Bark & Oak @		
120.00 per M	576.00	
34—7" Knecs @ 6.00 each	204.00	
14—8" " @ 7.00 "	98.00	
2—10" " @ 9.00 "	18.00	
1250 Treenails @ .08¢ each	100.00	
1300 White Pine Plugs @ 15.00		
per M	19.50	
800 White Pine Wedges @ 20.00		
per M	16.00	
		<hr/>
		\$10503.10
Iron, hardware, valves, paint and miscellaneous material from Coast		
Shipbuilding Co.'s yard	7500.00	18,003.10
<hr/>		
Miscellaneous material, accident insurance and miscellaneous direct expense		121,475.22
Direct labor on hull		55,555.11
Direct labor installation		52,899.18
Expenses subsequent to building		3,176.42
		<hr/>
		\$398,856.99
Credit by cash		350,000.00
		<hr/>
		\$ 48,856.99

Filed December 15, 1921. G. H. Marsh, Clerk.

AND AFTERWARDS, to wit, on the 21st day of March, 1922, there was duly filed in said court, an answer of libelant to the libel in intervention of the Bankers Discount Corporation, in words and figures as follows, to wit: [34]

In the District Court of the United States for the District of Oregon.

IN ADMIRALTY.

F. H. RANSOM, Trustee,

Libelant,

vs.

The Steamship "EGERIA," Her Masts, Bowsprit, Boats, Anchors, Cables, Riggings, Tackle, Apparel and Furniture.

THE BANKERS DISCOUNT CORPORATION,
a Corporation,

Intervening Libelant.

Answer of F. H. Ransom, Trustee, Libelant, to Libel in Intervention of the Bankers Discount Corporation, a Corporation, Intervening Libelant.

Comes now F. H. Ransom, Trustee, and for his answer to the libel in intervention of the Bankers Discount Corporation, a corporation, intervening libelant:

I.

Admits the allegations contained in Paragraph I of the libel in intervention of the Bankers Discount Corporation, a corporation, intervening libelant.

II.

Alleges that he has no knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph II of the libel in intervention of the Bankers Discount Corporation, a corporation, and therefore denies the same and the whole thereof.

III.

Admits the allegations contained in Paragraphs III and IV of the libel in intervention of the Bankers Discount Corporation, a corporation.

IV.

Denies each and every allegation contained in Paragraph [35] V of the libel in intervention of the Bankers Discount Corporation, a corporation, except as is hereinafter expressly and definitely set forth, alleged and admitted.

V.

Alleges that he has no knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph VI of the libel in intervention of the Bankers Discount Corporation, a corporation, and therefore denies the same and the whole thereof.

VI.

Denies each and every allegation contained in Paragraph VII of the libel in intervention of the Bankers Discount Corporation, a corporation, and the whole thereof.

VII.

Denies each and every allegation contained in Paragraph VIII of the libel in intervention of the Bankers Discount Corporation, a corporation, and the whole thereof, save and except that the libellant F. H. Ransom, Trustee, admits that the ship "Egeria" is now in the port of Portland within the District of Oregon in the custody of the marshal of the United States for the District of Oregon, and within the jurisdiction of this court.

For a further and separate answer and defense to the libel in intervention of the intervening libellant, The Bankers Discount Corporation, a corporation, libellant F. H. Ransom, Trustee, alleges:

I.

That the ship "Egeria" is a vessel of the United States, known as a steam screw of 2360 gross tons of the approximate length of 266.6 feet and 46.1 feet beam, which vessel is duly [36] registered in the American port of Portland, Oregon, and which vessel is now on the maritime waters of the United States in the port of Portland, Oregon, and within the jurisdiction of this court and in the custody of the United States Marshal of the District of Oregon, by virtue of process of this Court issued herein upon the libel of F. H. Ransom, Trustee.

II.

That the ship "Egeria" is owned by the parties and in the interests as in this paragraph set forth:

Coast Shipbuilding Company 39/100, H. B. Ainsworth 1/100, J. C. Ainsworth 1/100, Boston Packing Company 1/100, Loren A. Bowman 1/100, C. R. Brinkley 1/200, Sophia Batterson, Trustee 2/100, Retta Bishop Clarkson 1/350, Columbia Wire and Iron Works, 1/100, Eastern and Western Lumber Co. 7/100, Edward Ehrman 1/100, J. K. Gill Co. 1/100, Gillen & Chambers Co. 2/100, Carrie A. Hollbrook 1/140, H. James 1/100, James B. Kerr 31/700, M. L. Kline Co. 1/100, L. A. Lewis 1/100, Gus Kuhn 1/100, Meier & Frank Co. 1/100, Olds, Wortman & King 1/100, Oregon Brass Works 1/200, Overmire Steel Construction Co. 8/100, Jaeger Brothers 1/100, David Dahm 1/100, C. A. Park 1/100, Portland Marine Supply Co. 2/100, A. H. Harding 1/200, R. M. Tuttle 1/200, Rasmussen & Co. 1/100, Roberts Bros. 1/100, A. B. & L. M. Scott 1/100, Ben Selling 1/100, C. E. S. Wood, 1/100, Paul C. Bates 1/100, G. W. Herron 1/100, L. B. Menefee 12/140, all of Portland, Oregon, and Bird Rose 1/100, of Eugene, Oregon, who are the sole and only owners thereof.

III.

That heretofore and on or about the — day of —, 1920, the Coast Shipbuilding Company was a corporation organized and existing under and by virtue of the Laws of the State of Oregon, and engaged in building ships at Portland in Multnomah County, [37] Oregon.

IV.

That on or about the — day of —, 1920, in Portland, Oregon, and within the jurisdiction of

this court, the owners of said ship "Egeria" being the same persons enumerated and set forth in paragraph II herein, purchased said ship "Egeria" her masts, bowsprit, boats, anchors, cables, chains, rigging, tackle, apparel and furniture, from said Coast Shipbuilding Company for the sum of \$350,000.00, and fully and completely paid said Coast Shipbuilding Company therefor.

V.

That thereafter said Coast Shipbuilding Company asserted and alleged that it had and possessed a claim against the owners of said ship in the sum of \$25,000.00 for material, machinery and labor furnished and performed upon said ship, but which claim in said sum of \$25,000.00 the said Coast Shipbuilding Company expressly waived as a claim or lien against said ship, her masts, bowsprit, boats, anchors, cables, chains, rigging, tackle, apparel and furniture and by said waiver of said claim against said ship induced and persuaded the divers and sundry owners of said ship to purchase the interests therein so purchased and now owned by them as set forth in Paragraph II hereof, and that by reason of said waiver and said representations so made by said Coast Shipbuilding Company, the libellant, the Bankers Discount Corporation, a corporation, should be and is estopped from asserting any claim against said ship, her masts, bowsprit, boats, anchors, cables, chains, rigging, tackle, apparel and furniture by reason of said claim.

For a second further and separate answer and defense [38] to the libel in intervention of the

intervening libellant, The Bankers Discount Corporation, a corporation, libellant F. H. Ransom, Trustee.

I.

Realleges all of the allegations contained in Paragraphs I to V inclusive of the first, further and separate answer and defense herein with the same force and effect as if fully set forth in words herein.

II.

That heretofore and on the — day of March, 1921, a meeting was held in the city of Portland of all of the owners of the ship "Egeria," at which meeting the managing owner of said ship "Egeria," to wit: the Coast Shipbuilding Company, a corporation, was present and participated. That at said meeting it was determined by a majority of the owners, both in number and in amount, of said ship, to borrow money in the sum of \$35,000.00 for the purpose of paying certain obligations of said ship and it was then and there represented to the owners of said ship at said meeting by the managing owner, the Coast Shipbuilding Company, that if Libellant, F. H. Ransom, Trustee, would furnish and advance to and for the benefit of said ship, her masts, bowsprit, boats, anchor, cables, chains, rigging, tackle, apparel and furniture, the sum of \$35,000.00, that it, the said Coast Shipbuilding Company, would waive any and all claims by it made or asserted against said ship, her masts, bowsprit, boats, anchor, cables, chains, rigging, tackle, apparel and furniture, on account of the sum of \$25,000.00 by it, the said

Coast Shipbuilding Company, alleged to have been expended upon said ship, her masts, bowsprit, boats, anchor, cables, chains, [39] rigging, tackle, apparel and furniture, and that if he, the said F. H. Ransom, Trustee, would advance and furnish said sum of \$35,000.00 that it, the said Coast Shipbuilding Company, would and it did expressly waive any and all claims against said ship by reason of its said claim for \$25,000.00 alleged by it to have been expended for and on behalf of said ship, her masts, bowsprit, boats, anchor, cables, chains, rigging, tackle, apparel and furniture.

III.

That pursuant to the express representations of said Coast Shipbuilding Company, a corporation, that it would and did waive any and all claims against said ship "Egeria," her masts, bowsprit, boats, anchor, cables, chains, rigging, tackle, apparel and furniture, in the event that he the said F. H. Ransom, Trustee, would loan and advance to and on behalf of said ship said sum of \$35,000.00, the said Libellant, F. H. Ransom, Trustee, did so loan and advance to and on behalf of said ship said sum of \$35,000.00 as is alleged in the libel herein of Libellant F. H. Ransom, Trustee, and said ship has had the use and benefit of said money so loaned and advanced by him, said Libellant F. H. Ransom, Trustee.

IV.

That said F. H. Ransom, Trustee, so loaned and advanced said sum of \$35,000.00 to said ship, her owners and managing owners, as is alleged in his

libel herein, being induced thereto and relying upon the said representations and express promises and agreements of it, the said Coast Shipbuilding Company, a corporation, that it did and would waive any and all claims by it had or asserted against said ship "Egeria," her masts, bowsprit, boats, anchor, cables, chains, rigging, tackle, apparel and [40] furniture, on account of said pretended claim of said Coast Shipbuilding Company in the sum of \$25,000.00, and particularly should said Coast Shipbuilding Company be and it is estopped from alleging that its said pretended claim in the sum of \$25,000.00 or any other sum is prior to or superior to or equal to the claim of said F. H. Ransom, Trustee, in the sum of \$35,000.00 as is set forth in his petition herein.

WHEREFORE, F. H. Ransom, Trustee, prays that the libel in intervention of the Bankers Discount Corporation, a corporation, be dismissed and that the Bankers Discount Corporation, a corporation, take nothing herein and that he, the said Libellant, F. H. Ransom, Trustee, have the relief by him prayed for in his libel herein.

JOSEPH, HANEY & LITTLEFIELD,

Proctors for Libellant F. H. Ransom, Trustee.

United States of America,
State of Oregon,
County of Multnomah,—ss.

I, F. H. Ransom, being first duly sworn, depose and say that I am libellant and Trustee in the above-

entitled —; and that the foregoing answer is true as I verily believe.

F. H. RANSOM,
Trustee.

Subscribed and sworn to before me this 9th day of March, 1922.

[Seal]

B. E. HANEY,
Notary Public for the State of Oregon.

My commission expires Sept. 7, 1924. [41]

State of Oregon,
County of Multnomah,—ss.

Due service of the within answer is hereby accepted in Multnomah County, Oregon, this 20th day of March, 1922, by receiving a copy thereof, duly certified to as such by B. E. Haney, attorney for answering libellant.

WINTER & MAGUIRE,
By W. G. S.,
Attorneys for Intervening Libellant.

Filed March 21, 1922. G. H. Marsh, Clerk. [42]

AND AFTERWARDS, to wit, on the 18th day of May, 1922, there was duly filed in said Court, a reply by Bankers Discount Corporation, intervenor, to answer of libellant, in words and figures as follows, to wit: [43]

In the District Court of the United States for the
District of Oregon.

IN ADMIRALTY.

F. H. RANSOM, Trustee,

Libellant,

vs.

The Steamship "EGERIA," Her Masts, Bowsprit,
Boats, Anchors, Cables, Riggings, Tackle, Ap-
parel and Furniture.

THE BANKERS DISCOUNT CORPORATION, a
Corporation,

Intervening Libellant.

Reply to Answer of Libellant.

Comes now the Bankers Discount Corporation
and for reply to the further and separate answer
and defense of the libellant admits, denies and
alleges as follows:

I.

Admits each and every allegation of paragraphs
I, II and III.

II.

Denies each and every allegation of Paragraphs
IV and V.

And for reply to the second, further and sep-
arate answer and defense admits, denies and al-
leges as follows:

I.

Realleges each and every of the admissions,
denials and allegations of its first reply.

II.

Denies each and every allegation of Paragraph II.

III.

Denies each and every allegation of Paragraph III.

IV.

Denies each and every allegation of Paragraph IV. [44]

WHEREFORE having fully replied this intervening defendant prays that he may have relief prayed for in its intervening libel.

WINTER & MAGUIRE,

Proctors for Bankers Disc. Corporation.

State of Oregon,

County of Multnomah,—ss.

I, S. F. Wilson, being first duly sworn, depose and say that I am the Vice-president of the Bankers Discount Corporation, the intervening libellant in the above-entitled —; and that the foregoing reply is true as I verily believe.

S. F. WILSON.

Subscribed and sworn to before me this 18th day of May, 1922.

[Notarial Seal]

G. F. FABER,

Notary Public for the State of Oregon.

My commission expires July 20, 1923.

State of Oregon,

County of Multnomah,—ss.

Due service of the within reply is hereby accepted in Multnomah County, Oregon, this 18th day

of May, 1922, by receiving a copy thereof, duly certified to as such by Robert F. Maguire, attorney for intervening libellant.

B. E. HANEY,
Of Attorneys for Libellant.

Filed May 18, 1922, in open Court. G. H. Marsh,
Clerk. [45]

AND AFTERWARDS, to wit, on the 5th day of September, 1922, there was duly filed in said Court, an opinion in words and figures as follows, to wit: [46]

In the District Court of the United States for the
District of Oregon.

IN ADMIRALTY—No. 8865.

In the Matter of the Ship "EGERIA," Her Masts,
Bowsprit, Boats, Anchors, Cables, Rigging,
Tackle, Apparel and Furniture.
F. H. RANSOM, Trustee, Libellant.

September 5, 1922.

JOSEPH, HANEY & LITTLEFIELD for Libellant
F. H. Ransom, and for Intervening Libellant
J. V. MASON.

WINTER & MAGUIRE for Intervening Libellant
Bankers Discount Corporation.

C. D. CHRISTIANSON for Intervening Libellant
United Sheet Metal Works.

WOLVERTON, District Judge.—This is a libel instituted by F. H. Ransom, Trustee, against the

American Vessel "Egeria," her masts, bowsprit, etc., for the foreclosure of a mortgage given and executed by the Coast Shipbuilding Company, as managing owner of the vessel and for and in behalf of the owners thereof, to secure the payment of the sum of \$35,000, and interest thereon from date at the rate of ten per cent per annum, evidenced by a promissory note, also given and executed by the Shipbuilding Company in like capacity; and for recovery of the further sum of \$2010.26, as insurance money paid by libelant in pursuance of the stipulations of the mortgage. A first lien is claimed for both the mortgage and insurance money advanced.

Several parties have intervened, who also claim liens on the ship, namely, J. V. Mason, Bankers Discount Corporation, and United Sheet Metal Works. Mason claims a lien in one item of \$6,653.86, arising from certain advances made by the master of the ship, consisting of wages of officers and crew and repair bills for work done on the ship while on a voyage to San Pedro; the claims therefor having been assigned to intervener; another item of \$856.13, comprising divers accounts accruing to the Port of Portland, Columbia River pilots and others, which have also [47] been assigned to intervener; and a third item of \$645.51 for moneys advanced in behalf of the ship for wharfage, towage, lighterage, and supplies, with the knowledge and consent of the managing owner.

The United Sheet Metal Works claims a lien, in a balance of \$328.72, for certain construction work and repairs done and made upon the ship

at the instance of the Shipbuilding Company, the managing owner, which lien is alleged to be superior to that of Ransom, Trustee.

The Bankers Discount Corporation, intervener, claims a first lien on the ship for labor, machinery and materials necessary for building, repairing, fitting, furnishing, and equipping the ship, furnished by the Coast Shipbuilding Company under contract with the owners of the ship, in a balance of \$48,856.99, with interest at six per cent from the time of furnishing the materials and doing the work, which claim has been assigned to the intervener.

The chief controversy in the case is touching whether Ransom, Trustee, has a lien on the ship superior to that of the Bankers Discount Corporation. This depends upon whether the Coast Shipbuilding Company, the assignor of the Bankers Discount Corporation, waived its priority right in favor of Ransom, Trustee, when the note and mortgage were given and executed to him.

The testimony relating to the subject is somewhat lengthy, and it is unnecessary to follow it. Suffice it to say that I have given it careful study, and there is left in my mind no doubt that the Coast Shipbuilding Company, as managing owner of the ship, deliberately waived its lien in favor of Ransom's mortgage. Indeed, the money would not have been advanced and the mortgage accepted without the waiver of the prior lien of the Shipbuilding [48] Company. The libellant Ransom, Trustee, is therefore entitled to the foreclosure of his mortgage, with a lien on the vessel prior to that of the

intervener Bankers Discount Corporation. So also is he entitled to recovery, with like superior lien, of the money advanced in payment of insurance, and a reasonable attorney's fee for foreclosure of the mortgage. The court finds:

First. That the "Egeria" is indebted to F. H. Ransom, Trustee, libellant, in the sum of \$35,000, with interest thereon from March 1, 1921, at the rate of ten per cent per annum, aggregating \$40,298.65; in the further sum of \$850, for premiums on insurance advanced, with interest thereon at the rate of ten per cent per annum from November 17, 1921, aggregating \$918.30; and in the further sum of \$2500, which the Court fixes as a reasonable attorney's fee for foreclosing libellant's mortgage.

Second. That the "Egeria" is indebted to J. V. Mason, intervener, in the sum of \$6,653.86, with interest thereon from October 18, 1921, at the rate of six per cent per annum, aggregating \$7,006.51; the further sum of \$645.42, with interest thereon from November 20, 1921, at the rate of six per cent per annum, aggregating \$676.18; and the further sum of \$845.58, with interest thereon from December 12, 1921, at the rate of six per cent per annum, aggregating \$882.79; aggregating in all the sum of \$8,565.48.

Third. That the "Egeria" is indebted to the United Sheet Metal Works in the sum of \$328.72, with interest thereon at the rate of six per cent per annum from October 1, 1920, aggregating \$367.34.

Fourth. That the "Egeria" is indebted to the Bankers Discount [49] Corporation in the sum

of \$48,856.99, with interest thereon from March 1, 1921, at the rate of six per cent per annum, aggregating \$53,286.70.

The decree of the Court will be that the "Egeria" be sold, and that the proceeds thereof be applied:

1. To the payment of the costs and disbursements attending the libel.

2. To the payment of intervening libelant. Mason's demand.

3. To the payment of libelant's demand, including attorney's fee allowed.

4. To the payment of intervening libelant United Sheet Metal Works' demand.

5. To the payment of the demand of the intervening libelant Bankers Discount Corporation.

Filed September 5, 1922. G. H. Marsh, Clerk.
[50]

AND AFTERWARDS, to wit, on the 7th day of October, 1922, there was duly filed in said Court, objections to form of proposed decree, in words and figures as follows, to wit: [51]

In the District Court of the United States for the District of Oregon.

In the Matter of the S/S "EGERIA," Her Furniture, Apparel, etc.

Exceptions to Decree and Petition for Rehearing.

Comes now the Bankers Discount Corporation and files its exceptions to the decree proposed in this cause and prays for rehearing in the cause,

upon the ground and for the reason that there is manifest error in the Court's decision in holding that the intervenor Mason has any maritime lien against said ship and in holding that the Coast Shipbuilding Company waived its maritime lien against said ship, and in holding that D. W. Green, Secretary of the corporation, was authorized by the corporation to waive the corporation lien upon the ship and in refusing to hold that the Bankers Discount Corporation had a first and paramount lien upon said ship, its furniture, apparel, etc.

WINTER & MAGUIRE,

Proctors for Bankers Discount Corporation.

State of Oregon,

County of Multnomah,—ss.

Due service of the within and foregoing exceptions to decree and petition for rehearing is hereby admitted in Portland, Oregon, this 7th day of October, 1922.

JOSEPH, HANEY & LITTLEFIELD,

Attorneys for Libelants.

Filed October 7, 1922. G. H. Marsh, Clerk. [52]

AND AFTERWARDS, to wit, on Saturday, the 7th day of October, 1922, the same being the 83d judicial day of the regular July term of said Court. Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [53]

In the District Court of the United States for the
District of Oregon.

No. A-8865.

In the Matter of the Ship "EGERIA," Her Masts,
Bowsprit, Boats, Anchors, Cables, Rigging,
Tackle, Apparel and Furniture.

F. H. RANSOM, Trustee,

Libelant,

and

J. V. MASON, BANKERS DISCOUNT CORPO-
RATION, and UNITED SHEET METAL
WORKS, a Corporation,

Intervening Libelants,

and

COAST SHIPBUILDING COMPANY, a Corpora-
tion.

**Minutes of Court—October 7, 1922—Order Over-
ruling Objections to Decree.**

Now, at this day this cause comes on to be heard on the exceptions of the Bankers Discount Corporation, a corporation, intervening libelant herein, to the form of the decree, and its petition for rehearing, libelant appearing by Mr. Bert E. Haney, of counsel, and intervening libelant Bankers Discount Corporation by Mr. Robert F. Maguire, of counsel. And the Court, having heard the arguments of counsel, and being fully advised in the premises, upon consideration thereof

IT IS ORDERED that said exceptions be and they are hereby overruled, and that said petition be and the same is hereby denied. [54]

AND AFTERWARDS, to wit, on Saturday, the 7th day of October, 1922, the same being the 83d judicial day of the regular July term of said Court. Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [55]

In the District Court of the United States for the District of Oregon.

IN ADMIRALTY.

In the Matter of the Ship "EGERIA," Her Masts, Bowsprit, Boats, Anchors, Cables, Rigging, Tackle, Apparel and Furniture.

F. H. RANSOM, Trustee,

Libellant,

and

J. V. MASON, BANKERS DISCOUNT CORPORATION, a Corporation, and UNITED SHEET METAL WORKS, a Corporation,
Intervening Libellants,
and

COAST SHIPBUILDING COMPANY, a Corporation.

Final Decree.

This cause comes on for hearing, upon the motion of libellant, F. H. Ransom, for a decree herein, and

IT APPEARING to the Court, from an inspection of the records hereof, that the United States Marshal for the District of Oregon has returned on the process issued in the above-entitled cause that he has attached the said ship "Egeria," her masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel and furniture, and has given due notice to all persons claiming the same that this Court would, on the — day of December, 1921, proceed to the trial and condemnation of said vessel, her masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel and furniture, should not claim be interposed for the same, and notice having been given and made for and to all persons interested in said vessel, her masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel and furniture, to appear and interpose their claims; and

IT APPEARING that there has been filed in this Court [56] certain libels and petitions of intervention in which liens are claimed against said vessel, her masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel and furniture, to wit: the petitions in intervention of J. V. Mason, Bankers Discount Corporation, a corporation, and United Sheet Metal Works, a corporation, and the answer of Coast Shipbuilding Company;

And this matter having heretofore come on for hearing before me, the undersigned, a Judge of

the above-entitled court, on the 9th day of May, 1922, libellant, F. H. Ransom, Trustee, appearing personally and by Joseph, Haney & Littlefield, his proctors, intervening libellant, United Sheet Metal Works, appearing personally, and Carl D. Christianson, its proctor, intervening libellant, Bankers Discount Corporation, appearing personally and by Winters & Maguire, its proctors, and Coast Shipbuilding Company appearing personally and by Winters & Maguire, its proctors, and this cause having been heard upon the pleadings herein in reference to the libel of libellant, F. H. Ransom, Trustee, and the answer of Coast Shipbuilding Company filed thereto, and upon the intervening libels filed by J. V. Mason and by United Sheet Metal Works, and the Court having considered the evidence and arguments submitted by the various parties and proctors herein, and now being fully advised:

IT IS ORDERED, ADJUDGED AND DECREED that the ship "Egeria," her masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel and furniture, be sold to answer the prayer of the libels and petitions herein filed, and that *venditioni exponas* issue accordingly, and that said vessel, her masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel and furniture, be sold at public sale for cash by the United States Marshal of the District of Oregon at the Morrison Street entrance [57] of the United States Court House (old Postoffice Building) in the city of Portland, Oregon, located on the south side of Morrison

Street, between Fifth and Sixth Streets, therein, after publishing notice of said sale once a week for two consecutive weeks in a newspaper of general circulation published daily in the city of Portland, Multnomah County, Oregon, and that the proceeds of said sale be paid by the Marshal into the registry of this Court for distribution herein;

AND IT IS FURTHER ORDERED AND DECREED that the following claims against said vessel, her masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel and furniture, are hereby ordered and decreed to be liens against said vessel and the proceeds of said sale in the amounts and in the order of priority herein set forth, that is to say:

First. Intervening libellant J. V. Mason be and he is hereby ordered and decreed to be entitled to a lien against said ship "Egeria," her masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel and furniture, in the sum of \$8,565.48, together with his costs incurred herein taxed at \$——;

Second. That libellant F. H. Ransom, Trustee, be and he is hereby ordered and decreed to be entitled to a lien against said Ship "Egeria," her masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel and furniture, in the sum of \$43,716.95, together with his costs and disbursements herein taxed at \$——;

Third. That intervening libellant, United Sheet Metal Works be and it is hereby ordered and decreed to be entitled to a lien against said Ship

"Egeria," her masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel and furniture, in the sum of \$367.34, together with its costs and disbursements herein [58] taxed at \$—;

Fourth. That intervening libellant, Bankers Discount Corporation, be and it is hereby ordered and decreed to be entitled to a lien against said ship "Egeria," her masts, bowsprit, anchors, cables, rigging, tackle, apparel and furniture, in the sum of \$53,286.70, together with its costs and disbursements herein taxed at \$—.

AND IT IS FURTHER ORDERED AND DECREED that the following claims against said ship "Egeria," her masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel and furniture, shall be paid out of the proceeds of said sale in the amounts hereinafter set forth, and in the order of priority hereinafter set out, together with costs therein to be duly taxed herein:

First. To the United States Marshal for the District of Oregon as the costs of said sale the sum of \$—;

Second. To intervening libellant, J. V. Mason, the sum of \$8,565.48, together with his costs herein taxed at \$—;

Third. To libellant, F. H. Ransom, Trustee, the sum of \$43,716.95, together with his costs herein taxed at \$—;

Fourth. To intervening libellant, United Sheet Metal Works, the sum of \$367.34, together with its costs herein taxed at \$—;

Fifth. To intervening libellant, Bankers Discount Corporation, the sum of \$53,286.70, together with its costs herein taxed at \$——;

AND IT IS FURTHER ORDERED AND DECREED that after the payment of said sums to the parties herein named and in the order hereinabove named the balance of the proceeds of said sale remaining in the registry of this court be distributed according to the further order of this Court. [59]

AND IT IS FURTHER ORDERED AND DECREED that any claimant or claimants listed in this decree may bid and become the purchaser upon the sale of said ship "Egeria," her masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel and furniture, to be made pursuant hereto, and if such claimant or claimants shall become the purchaser or purchasers, such claimant or claimants shall be entitled to apply, as an offset against the purchase price bid, his or their claim or claims to the extent to which such claimant or claimants would have been entitled to receive as the result of said sale, and share the dividend on the purchase price paid; provided, however, that such purchaser shall pay in cash a sufficient amount to provide for the Marshal's fees, Clerk's fees, expenses of sale and any preferred claims that may exist.

Dated at Portland, Oregon, this 7th day of October, 1922.

CHAS. E. WOLVERTON,
District Judge.

Bert E. Haney left a copy with me this 16th of September, 1922.

ROBT. F. MAGUIRE.

Filed October 7, 1922. G. H. Marsh, Clerk. [60]

AND AFTERWARDS, to wit, on the 6th day of April, 1923, there was duly filed in this Court, a notice of Appeal in words and figures as follows, to wit: [61]

In the District Court of the United States for the District of Oregon.

IN ADMIRALTY.

In the Matter of the Ship "EGERIA," Her Masts, Bowsprit, Boats, Anchors, Cables, Rigging, Tackle, Apparel and Furniture,

F. H. RANSOM, Trustee,

Libellant,

and

J. V. MASON, BANKERS DISCOUNT CORPORATION, a Corporation, and UNITED SHEET METAL WORKS, a Corporation,
Intervening Libellants,

and

COAST SHIPBUILDING COMPANY, a Corporation.

Notice of Appeal.

To the Steamship "Egeria," her masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel and furniture and F. H. Ransom, Trustee, and Messrs Joseph, Haney & Littlefield, proctors for said libellant and respondent, and J. V. Mason and Messrs Joseph, Haney & Littlefield, proctors for said intervening libellant and respondent, and United Sheet Metal Works, a corporation, and Carl D. Christianson, proctor for said intervening libellant and respondent, and to the Clerk of the United States District Court:

Please take notice that the intervening libellant Bankers Discount Corporation and the Coast Shipbuilding Company hereby appeal from the final decree made and entered herein on the 7th day of October, 1922, to the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in and for said Circuit at the city of San Francisco in the State of California.

Dated at Portland, Oregon, April 6th, 1923.

WINTER & MAGUIRE,

By W. H. MAGUIRE,

One of Proctors for Intervening Libellant Bankers
Discount Corporation and Coast Shipbuilding
Company. [62]

State of Oregon,

County of Multnomah,—ss.

Due and legal service of the within notice of appeal is hereby accepted in Multnomah County, this 6th day of April, by receiving a copy thereof duly

certified to as such by W. H. Maguire, or proctors for intervening libellant and appellant Bankers Discount Corporation and Coast Shipbuilding Company.

JOSEPH, HANEY & LITTLEFIELD,

By E. V. L.,

Proctors for the Libellant F. H. Ransom.

JOSEPH, HANEY & LITTLEFIELD,

By E. V. L.,

Proctors for Intervening Libellant J. V. Mason.

C. D. CHRISTIANSON,

Proctor for Intervening Libellant United Sheet Metal Works.

Filed April 6, 1923. G. H. Marsh, Clerk. [63]

AND AFTERWARDS, to wit, on the 11th day of July, 1923, there was duly filed in said Court, an assignment of errors, in words and figures as follows, to wit: [64]

In the District Court of the United States for the
District of Oregon.

IN ADMIRALTY.

In the Matter of the Ship "EGERIA," her Masts,
Bowsprit, Boats, Anchors, Cables, Rigging,
Tackle, Apparel and Furniture.

F. H. RANSOM, Trustee,

Libellant,

and

J. V. MASON, BANKERS DISCOUNT COR-
PORATION, a Corporation, and UNITED
SHEET METAL WORKS, a Corporation,

Intervening Libellants,

and

COAST SHIPBUILDING COMPANY, a Cor-
poration.

Assignments of Error on Behalf of the Appellant.

Comes now the appellant, the intervening libel-
lant Bankers Discount Corporation, and assigns as
error to this court the following:

I.

That the District Court erred in this: that the
libellant offered to prove the conversation between
F. H. Ransom and Donald Green respecting the
priority of the libellant's mortgage, and the appel-
lant objected thereto on the ground that there was
no foundation laid for their admission either as
binding upon the Coast Shipbuilding Company or

as binding upon the Bankers Discount Corporation. [The matter of the disposition of the rights of a corporation, the sale or waiver of its property, are matters that necessarily must be acted upon by the corporation's board of directors, and it must be first shown that the person making the statement was an officer who had authority, and that the authority was broad enough to permit him to undertake the act claimed against him; that the officers of an Oregon corporation have only such rights to bind the corporation as are given them by the by-laws or by the acts of the board of directors. Whereupon the Court [65] overruled the objection and permitted the testimony as follows:

A. It has been stated here that the Steamer "Egeria" and owners was not a corporation, but a partnership, as it were, in the Steamer "Egeria"; and on that management, that assumption of management Mr. Green has made positive statements that this money that I was to act as trustee for was to have first claim before anything else on this vessel. In fact, indirectly, without being personally a stockholder, I advanced \$2,500 myself.

COURT. Whom did you say Mr. Green represented?

A. The partnership owners of the Steamer "Egeria."

COURT. He does not represent, then, the Coast Shipbuilding Company?

A. He was representing both the Coast Shipbuilding Company as Secretary and as Managing Owner of the Steamer "Egeria."

COURT.—In that capacity he was acting for the copartnership?

A. I would assume that he was acting for the copartnership.

COURT.—Very well.

A. At one conversation in the United States National Bank with Mr. J. C. Ainsworth, when I myself solicited, in conjunction with Mr. Green, Mr. Ainsworth's support for some money to apply on this mortgage, I was advised then and there that there would be no lien prior to the money so advanced; and it was somewhat of a surprise to me when I was advised that there was any other claim that had taken precedence, or was assumed to take precedence over this mortgage which I held as trustee for those that had advanced money amounting to something like \$35,000,—\$35,000.

COURT.—The mortgage had not been given at that time?

A. The mortgage had not been given at that time. When the money was finally secured, then the mortgage was given me, and a memorandum of each individual advance sent to the mortgagees, of whom I am trustee.

II.

The Court erred in this: That the libellant F. H. Ransom having offered to prove that Donald Green had stated that the Coast Shipbuilding Company would not appear with any claim in advance of the mortgage and that the mortgage would have priority over that claim, the respondent objected thereto upon the same grounds set [66] out in

assignment No. 1; whereupon the Court overruled the objection and admitted the testimony as follows:

Q. What, if anything, did Mr. Green say concerning the claims of the Coast Shipbuilding Company?

Mr. MAGUIRE.—Same objection, Your Honor, as I heretofore urged.

Objection overruled. Exception allowed.

A. I don't remember just what the statement was, but there was an intimation that the vessel had cost the Shipbuilding Company more than the \$350,000, but that was not at that time a matter of record, and that it would not appear with any claim in advance of the mortgage; the mortgage would have priority over that.

III.

The Court erred in this that the libellant Ransom offered to prove that at said time and place Mr. Green purported to speak for the Coast Shipbuilding Company with regard to such waiver of its claim in favor of the mortgage; the respondent objected thereto on the ground that it calls for a conclusion of the witness, and that it is leading. Whereupon the Court overruled the objection and admitted the testimony as follows;

Q. Did Mr. Green purport to speak for the Shipbuilding Company then?

A. The conversation was very general, and there was a great deal of discussion there, and those that were present at that meeting were assured by Mr. Green that whatever money they advanced would have priority over any other claim.

IV.

That the Court erred in this that the libellant offered to prove that Donald Green at various times and places prior to the execution of the mortgage had assured the stockholders of the ship who should participate in advancing money upon the libellant's mortgage that said mortgage would be a first lien and that the Coast Shipbuilding Company would waive its claim of lien and all [67] claims of priority over said mortgage, and that there were no other liens or claims against it. By agreement of Court and counsel it was stipulated that the counsel's objection to Mr. Green's authority to bind either the intervening libellant or the Coast Shipbuilding Company as stated in assignment of error No. 1 should go to all the testimony of this kind, and that it should not be necessary to interrupt the proceedings by specific objections to each question asked of the witness upon that subject and note an exception to the Court's ruling thereon, and thereupon the Court overruled the counsel's objections and allowed an exception, and the witness testified in accordance with said offer as appears in the testimony, which testimony is too voluminous to be set out herein, but which by reference is made a part hereof.

V.

The Court erred in this that libellant offered to prove that one of the shareholders, Paul C. Bates, had received a letter dated February 25th, 1921, marked Libellant's Exhibit 5. The appellant objected thereto that there is nothing in the letter

binding the Coast Shipbuilding Company or the intervening libellant Bankers Discount Corporation. Whereupon the Court overruled the objection and admitted Libellant's Exhibit 5.

VI.

The Court erred in this that the libellant having offered to prove that J. P. Rasmussen has put money into the mortgage relying upon the representation of Donald Green that the mortgage would be a first lien upon the boat. The appellant objected thereto on the ground that it was not material to any issue in the case. The Court overruled the objection and admitted the testimony as follows:

"I certainly believed that that was the case. If I did not know that it would be a first lien I would never have put a dollar into it. I would rather have lost what I put in before." [68]

VII.

The Court erred in this that the libellant having offered in evidence as intervening libellant Mason's Exhibit No. 7 a receipt alleged to have been given by the master of the Steamship "Egeria" October, 1921, to Jas. V. Mason, as trustee for the mortgagees of the vessel of \$6,600.00 with interest at the rate of 8% per annum, payable quarterly from date, the above sum advanced on the exclusive credit of the said Steamship "Egeria" to her master, and the appellant objecting thereto upon the ground that it is incompetent, irrelevant and immaterial to any issue of the case. Whereupon the Court overruled

the objection and admitted said Exhibit No. 7 in evidence.

VIII.

That the Court erred in this that the appellant having moved to strike out the intervening libellant Mason's Exhibit No. 7 on the ground that it had not been properly proven because the document has been witnessed, and a document witnessed can only be proven by the subscribing witness. Whereupon the Court overruled said motion and further permitted the witness to testify over the objection of counsel that he saw the master sign the receipt before the witness handed him the money.

IX.

The Court erred in this that the intervening libellant Jas. V. Mason having offered to prove that he had advanced the sums of \$651.50, \$845.58, and \$264.39 for pilotage, wages of men, captain's wages, dock charges, pilotage up the Columbia river, cleaning boilers, taking down and stowing topping gear, oiling the engines, arrangements for towage to permanent berth and rental of permanent berth, and the appellant objected thereto upon the ground that it was not within the issues of the case, irrelevant and immaterial and not constituting items of maritime lien. Whereupon [69] the Court overruled the objection and permitted the testimony.

X.

The Court erred in this that the libellant offered in evidence and offered to prove intervening libellant's Exhibits Nos. 8 to 17 inclusive, and appellant objected thereto upon the ground that the same

were not proper items of maritime lien and that no proper foundation had been laid. The Court thereupon overruled the objection and admitted said exhibits.

XI.

The Court erred in this that the libellant having offered in evidence intervening libellant J. V. Mason's Exhibit No. 18, and the testimony of J. V. Mason with regard thereto the appellant objected to said exhibit and said testimony on the ground that no foundation had been laid for their admission, and that they and each of them are not lienable items, and particularly that they are not maritime liens.

XII.

The Court erred in this that the libellant having offered in evidence intervening libellant Mason's Exhibit 19 and offered to prove that he had advanced said sums, the appellant objected thereto upon the same grounds as set forth in error No. XI, and thereupon the Court overruled the objection and admitted the testimony and exhibit.

XIII.

That the Court erred in this in overruling the appellant's motion to dismiss the intervening libellant J. V. Mason upon the ground and for the reason that there is no authority of J. V. Mason to make the payments or incur the expenditures set forth in his libel, and that the items which he sets out in his libel are lienable and do not constitute maritime liens, and are without the jurisdiction of the Court to enforce. [70]

XIV.

The Court erred in this in overruling appellant's motion to strike from the record all testimony and each and every part thereof offered on behalf of the libellant J. V. Mason upon the ground that there has been no foundation laid, and particularly that intervening libellant Mason's Exhibit 7 has not been proved.

XV.

The Court erred in this in overruling the motion of the appellant to dismiss the libel of F. H. Ransom as trustee upon the ground and for the reason that it is an attempt on the part of the owners of the ship to create a lien in themselves as against themselves and against their ship, and that their proper proceeding is not in admiralty, but is for the dissolution of the partnership existing between them, and for an accounting.

WINTER and MAGUIRE,

Proctors for Bankers Discount Corporation.

State of Oregon,

County of Multnomah,—ss.

Due service of the within assignments of error on behalf of the appellant is hereby accepted in Multnomah County, Oregon, this 11th day of July, 1923, by receiving a copy thereof, duly certified to as such by Robert F. Maguire, Proctor for appellant.

JOSEPH, HANEY & LITTLEFIELD, and

JOHN C. VEATCH,

Proctor for Libellant and Intervening Libellant
J. V. Mason.

Filed July 11, 1923. G. H. Marsh, Clerk. [71]

AND AFTERWARDS, to wit, on the 11th day of July, 1923, there was duly filed in said Court, the evidence introduced at the trial of the cause, in words and figures as follows, to wit: [72]

In the District Court of the United States for the District of Oregon.

In the Matter of the Ship "EGERIA," Her Masts, Bowsprit, Boats, Anchors, Cables, Rigging, Tackle, Apparel and Furniture.

F. H. RANSOM, Trustee,

Libellant,

and

J. V. MASON, BANKERS DISCOUNT CORPORATION, a Corporation, and UNITED SHEET METAL WORKS, a Corporation,

Intervening Libellants,

and

COAST SHIPBUILDING COMPANY, a Corporation.

Testimony of F. H. Ransom, for Libellant.

F. H. RANSOM, being called as a witness on behalf of the Libellant, and being first duly sworn, testified as follows:

"I am the manager of the Eastern & Western Lumber Company, and am the F. H. Ransom, Trustee, mentioned in the libel. I hold a note executed by the Ship through her managing owners; I personally was not an owner in the ship, but the East-

(Testimony of F. H. Ransom.)

ern & Western Lumber Company; the matter of putting a mortgage upon the ship was brought about by the following conditions: The "Egeria" had made a somewhat unsuccessful and very unprofitable trip to Australia, and it became necessary to make alterations so that she could be used in a trade that was more in keeping with her type of vessel, and the Coast Shipbuilding Company, the managing owners, decided that they could make certain changes and pay up certain bills, and for that purpose would require not to exceed \$35,000.00. By request I accepted the trusteeship for the potential future mortgagees, who should participate in the loan. I accepted the [73] trust with the full understanding that I would assume no financial responsibility, and that those advancing money would have a first claim on the vessel. This understanding was had with Mr. Green, manager and secretary of the Coast Shipbuilding Company."

"Q. Instead of stating what the understanding was, as nearly as you can, tell the Court what conversations you had with Donald Green respecting this mortgage, with reference to the priority of the mortgage. If you can give the time and place, do so. If you cannot, tell the effect of the conversation, as best you can."

"A. Well, I cannot remember verbatim the conversation, but there were various conversations, and one statement was—"

Mr. MAGUIRE.—"Just a moment, Mr. Ransom. We would object to conversations had with Mr. Green, on the ground that there is no foundation

laid for their admission, either as binding upon the Coast Shipbuilding Company, or as binding upon the Bankers Discount Corporation. The matter of the disposition or of the rights of a corporation, the sale or waiver of its property, are matters that necessarily must be acted upon by the corporation's board of directors. I take it that upon the question of the authority to bind a corporation, it must be first shown that the person was an officer who had authority, and that that authority was broad enough to permit him to undertake the act claimed against it. The officers of an Oregon corporation have only such rights to bind the corporation as are given them by the by-laws or by the acts of the Board of Directors."

(Argument.)

Mr. HANEY.—I think, your Honor, this evidence is admissible. It is competent. It is only incidental to the final act [74] that occurred at a later date. You will keep in mind we will show by the record here the Coast Shipbuilding Company has sold this vessel to these various people, had warranted the title to it as being free from encumbrances, undertaken to warrant them against any loss or damage. Then came the necessity of getting this money. The Coast Shipbuilding Company acted entirely through Donald Green. The Coast Shipbuilding Company acted through Donald Green in signing the bill of sale; it later acted through him in signing the note and mortgage. He was the moving spirit in the matter, in so far as the owners knew. Now, it seems to me that it is a material

(Testimony of F. H. Ransom.)

thing that the Court should have the view of what it was that induced Mr. Ransom to put money into this thing; and if he was induced by Green, who held himself out as being the active party in the Coast Shipbuilding Company, certainly the Coast Shipbuilding Company cannot go to people and induce them to put up money on the representation that they will waive any prior rights to the lien created to repay that money, and then having induced them to do that by reason of such representation, turn around and assert some kind of a lien or claim that it is ahead of it. I don't think this is an absolute necessity, but I do think it is material."

COURT.—"You claim that this is matter that originated with Green?

Mr. HANEY.—Yes.

COURT.—I will overrule the objection, and permit the testimony.

Mr. MAGUIRE.—I would like to save an exception.

A. It has been stated here that the steamer "Egeria" and owners was not a corporation, but a partnership. Mr. Green represented that partnership as it were, in the steamer 'Egeria'; [75] and on that management, that assumption of management, Mr. Greene had made positive statements that this money that I was to act as trustee for was to have first claim before anything else on this vessel. In fact, indirectly, without being personally a stockholder, I advanced \$2500.00 'myself.'"

COURT.—Whom did you say Mr. Green represented?

(Testimony of F. H. Ransom.)

A. The partnership owners of the steamer "Egeria."

COURT.—He does not represent, then the Coast Shipbuilding Company?

A. He was representing both the Coast Shipbuilding Company as secretary and as managing owner of the steamer "Egeria."

COURT.—In that capacity he was acting for the copartnership?

A. I would assume that he was acting for the copartnership.

COURT.—Very well.

A. At one conversation in the United States National Bank with Mr. J. C. Ainsworth, when I myself solicited, in conjunction with Mr. Green, Mr. Ainsworth's support for some money to apply on this mortgage, I was advised then and there that there would be no lien prior to the money so advanced; and it was somewhat of a surprise to me when I was advised that there was any other claim that had taken precedence, or was assumed to take precedence over this mortgage, which I held as trustee for those that had advanced money amounting to something like \$35,000.00."

COURT.—The mortgage had not been given at that time?

A. The mortgage had not been given at that time? When the money was finally secured, then the mortgage was given me, and a memorandum of each individual advance sent to the mortgagees, of whom I am trustee.

(Testimony of F. H. Ransom.)

I was at a meeting in the Chamber of Commerce Building [76] on or about February 24, 1921, at which Mr. Green was present.

Q. What, if anything, did Mr. Green say concerning the claims of the Coast Shipbuilding Company?

Mr. MAGUIRE.—Same objection, Your Honor, as I heretofore urged.

(Objection overruled. Exception allowed.)

A. I don't remember just what the statement was, but there was an intimation that the vessel had cost the Shipbuilding Company more than the \$350,000.00, but that was not at that time a matter of record, and that it would not appear with any claim in advance of the mortgage; the mortgage would have priority over that.

Q. Did Mr. Green purport to speak for the Shipbuilding Company then?

Mr. MAGUIRE.—I object to that. That calls for a conclusion of the witness. The witness may testify what Mr. Green said. And there is the additional objection that it is leading.

(Objection overruled. Exception allowed.)

A. The conversation was very general, and there was a great deal of discussion there, and those that were present at that meeting were assured by Mr. Green that whatever money they advanced would have priority over any other claim.

Q. When was the money actually advanced with reference to the time you had this meeting in the Chamber of Commerce?

(Testimony of F. H. Ransom.)

A. Well, the money was secured at various times; came largely through the mail, after solicitation at this meeting, and agreements that were made at this meeting.

Q. The point is, before or after that meeting?

A. After that meeting.

Q. What induced you to put the money up?

A. My personal amount? [77]

Q. Yes, your own.

A. With the assertion that there was absolutely no financial risk, and that the money was needed to complete the \$35,000.00 that was required at that time to make the necessary repairs and alterations in the vessel.

Q. What, if anything, did Mr. Green say at that meeting with reference to the attitude or the future action of the Coast Shipbuilding Company with respect to any claim that it might have?

Mr. MAGUIRE.—May it be understood that my objection to Mr. Green's authority to bind either the intervening libellant or the Coast Shipbuilding Company, goes to all this testimony, so I will not have to interrupt the witness?

COURT.—Very well. That may be understood.

A. Mr. Green did not bring any detailed claim or specify any amount, as I remember it, intimate any serious claim of the Coast Shipbuilding Company.

Q. He didn't specify the amount, but he did mention the fact that they had a claim?

A. He mentioned that the vessel had cost them more than this amount, and that there was a claim.

(Testimony of F. H. Ransom.)

Q. What did he say, with respect to your mortgage, that the Coast Shipbuilding Company would do about that claim?

A. That the claim would be secondary to the mortgage.

Q. Do you know Mr. Fred Wilson of the Bankers Discount Corporation? A. I do.

Q. Have you had any conversation with him, prior to the time you filed this libel against the ship "Egeria" with respect to the claim of the mortgage? [78]

A. I have never had one word of discussion with Mr. Wilson regarding the steamer "Egeria" or the Coast Shipbuilding Company.

Q. Has any part of that mortgage been repaid?

A. It has not.

Q. What about the interest?

A. The interest has defaulted, nothing being paid.

Q. What, if anything, did you do with respect to keeping the steamer "Egeria" insured after the time of making the mortgage?

A. I don't remember just the date, but I found out that the insurance had lapsed and I notified the committee that was looking after the "Egeria" that there was no insurance on it at that time.

Q. Did you advance money to pay the insurance?

A. I did not personally, no.

Q. Do you know what one of the committee, or whether they did advance any money to pay the insurance out of your fund?

(Testimony of F. H. Ransom.)

A. I merely acted as trustee, and not looking after the management of the vessel after that money was invested, I paid very little attention to those details; but I believe some insurance money was advanced to bring the vessel from San Pedro to Portland.

Q. What one of the committee looked after that?

A. Mr. Bates.

Q. Paul Bates? A. Yes.

Mr. HANEY.—You admit the execution of the note and mortgage?

Mr. MAGUIRE.—Have you copies of them here?

Mr. HANEY.—Yes, I have set them out.

Mr. MAGUIRE.—Is it made a part of your libel?

Mr. HANEY.—Yes.

Mr. MAGUIRE.—We admit the execution of the two instruments, the promissory note of \$35,000.00 and the mortgage, copies of which [79] are made a part of the libel. We make no concession, however, as to the legal effect of those instruments.

On cross-examination the witness testified as follows:

“So far as I am able to say the persons or firms participating in the loan are those named in intervening Libellant’s Exhibit ‘A,’ which was prepared under my direction.”

Q. I notice to the left there is a column “Subscriber” and then a column “Subscription.” The subscription referred to the amount in the ship, subscription in the ship, partnership subscription?

A. The original subscription.

Q. The original interest in the ship? A. Yes.

(Testimony of F. H. Ransom.)

Q. And then there is a column headed "Pro Rata Share, \$42,500.00." That refers to what matter?

A. That is the third column?

Q. The second column.

A. You will notice that, that is, each one subscribed in proportion to their stock, the amount in proportion to \$42,500.00.

Q. But they didn't all come in according to their amount of stock, and the total amount raised was \$35,000.00 instead of \$42,500.00? A. Yes.

Q. These various amounts that were apportioned in the second column, headed "Pro rata shares \$42,500," were arrived at by taking the amount by the proportion which their amount of shares in the ship bore to the amount that you desired to raise?

A. Yes.

Q. The third column, "Mortgage Subscription," is the amount which was actually paid in, and which you claim is covered [80] by your note and mortgage? A. Yes.

Q. I want to ask you if it is not a fact that what you were informed by Mr. Green was that this mortgage when properly executed and registered, would, under the 1920 shipping laws, become the first mortgage upon the ship under the provisions of that act?

A. I don't remember that Mr. Green ever mentioned any of the legal phrases, or shipping acts, etc. It was simply the plain, blunt statement that this mortgage had priority over anything else against the ship up to that time.

(Testimony of F. H. Ransom.)

Q. You knew the mortgage was being given under the shipping act, did you not?

A. I knew that it would be recorded in the Custom House; but I am very unfamiliar with maritime acts or laws.

Testimony of Paul C. Bates, for Libellant.

PAUL C. BATES, being called as a witness on behalf of the libellant, and being first duly sworn, testified as follows:

"I am in the insurance business, and was one of the owners of the Ship 'Egeria' during the years 1920 and 1921. I first learned of the necessity of raising money for the 'Egeria' about the time the ship returned to Portland from Australia, and it was necessary to raise money to cover the deficit representing operating expenses and to obviate certain defects revealed as a result of the trip which must be done before the ship was put in commission again. This loss was called to my attention in the latter part of December, 1920. The operating loss was due to the long time it took to load her and to discharge her in Australia, and the loss of time in Australia in getting her cargo coaled for return to Honolulu. The delays and expenses of operating totalled a considerable deficit, but how much I do not remember.

"I obtained my information as to the necessity of raising [81] money for the 'Egeria' in the latter part of December, 1920, from Mr. Green, representing the Coast Shipbuilding Company, then the managing owners of the vessel, and the owners of

(Testimony of Paul C. Bates.)

a substantial portion of the boat. I was solicited by and gave to Mr. Green in the name of the Coast Shipbuilding Company a power of attorney to represent my interests in the boat. The following is a copy of the document, being marked Libellant's Exhibit 1."

Libellant's Exhibit No. 1.

"Portland, Oregon, December 22, 1920.

Coast Shipbuilding Company,
Portland, Oregon.

Gentlemen:

The undersigned, part owner of the steam schooner "Egeria" and her appurtenances, etcetera, hereby appoints you, Coast Shipbuilding Company, Managing Owner thereof, with all the usual powers of a managing owner, and also with power to insure said vessel, her freights, and liabilities, and the ownership and liabilities of the undersigned in the premises in such manner and to such extent as in your judgment may seem best, and also to defend the said vessel and/or the undersigned, in any action or claims against her, and to sue or defend, collect, compromise, and settle all claims or demands for or against the vessel and/or the undersigned as part owner thereof; and also to repair, equip, supply, renew, and alter the vessel and all parts thereof, and to man and document and operate and salvage said vessel, and generally to charter, manage and control the vessel and her business; and also to negotiate and secure any and all loans or banking accommodations in your judgment necessary, and to

secure the same by mortgage or pledge of the vessel, or in such other manner as may be required.

For your services as Managing Owner, you are to receive a commission of two and one-half per cent ($2\frac{1}{2}\%$) on the gross receipts of the vessel. Any advances made by you for the account of the owner of the vessel shall bear interest at the going rate until repaid, and shall be a lien upon the vessel and her earnings."

"I received from the Coast Shipbuilding Company, Libellant's Exhibit 2, which is as follows:

Libellant's Exhibit No. 2.

'COAST SHIPBUILDING COMPANY,
914 Lewis Building,
Portland, Oregon. [82]

December 23, 1920.

To the Subscribers Str. "Egeria":

We are enclosing two copies of agreement appointing Coast Shipbuilding Company Managing Owners. Please sign one copy and return, retaining the other copy for your information.

To facilitate matters, we have asked Mr. F. H. Ransom and Mr. Paul C. Bates to act in an advisory position in the conduct of the vessel's affairs.

On account of the fact that the "Egeria" is on return voyage and arrangements have to be made for future operations, we trust you will sign and return the enclosed at once.

Very truly yours,
COAST SHIPBUILDING COMPANY.'

(Testimony of Paul C. Bates.)

I had a conversation with Mr. Don. Green, who I understood was one of the officers and directors of the Coast Shipbuilding Company, as to the necessity of raising money to take care of the deficit and make some changes in the boat. Mr. Green said the boat was about to arrive, that there would be liens filed on account of labor and other expenses as the returns from the charters were not sufficient to cover the actual operations incurred on the trip to Australia and back. Mr. Green said that the stockholders would have to raise the money or they would have to borrow it, and Mr. Green made some arrangements temporarily to take care of the labor accounts, through what source I don't recall, but it was only temporary and he was quite anxious either that the stockholders take some interest in it and he thought I could possibly be of some assistance to him in raising the money. I call them stockholders because in maritime matters I look upon a stockholder the same as you would use a shareholder in other enterprises. What I mean is individual owners in the boat. I suggested to Mr. Green that the Coast Shipbuilding Company should immediately call a meeting of all the shareholders in the vessel [83] and place the financial condition of the vessel before the shareholders for their action rather than to deal with one or two like myself, whose interest in the boat was only nominal. It is my understanding that he didn't care to do that at the time for some reason or other and endeavored to raise the money in other ways. It finally resulted

(Testimony of Paul C. Bates.)

in his asking me to accompany him and Mr. Ransom to the United States National Bank with the idea of negotiating a loan from the bank for from \$30,000.00 to \$35,000.00, which he thought would be sufficient. Mr. Ransom and I accompanied Mr. Green to the United States National Bank and had a talk with Mr. John Ainsworth, the president, who a couple of days later advised us that his committee did not consider the loan desirable. As an inducement we represented that we would give him a mortgage on the boat which would be a first lien, and Mr. Green corroborated the offer. Our failure in that direction made it necessary to place the matter before the shareholders that they might take such action as was necessary to protect their interests. There was mailed to each shareholder of record a notice dated February 14th, 1921, executed by the Coast Shipbuilding Company, Managing Owners, by D. W. Green, and also by F. H. Ransom, Paul C. Bates, James B. Kerr, Leslie M. Scott and C. C. Overmire, Messrs. Scott, Ransom, Overmire, etc., representing themselves as shareholders. Libellant's Exhibit 3 is a copy of this notice, and is as follows: [84]

Libellant's Exhibit No. 3.

February 14, 1921.

To the Shareholders SS. "Egeria":

The undersigned have made a general investigation of the results of the round trip of the vessel "Egeria" to Australia via Honolulu and it is going to require a total of \$35,000 additional in the way of

capital or loan to make good the deficit caused by the operation of the vessel together with the providing of sufficient funds to take care of the remaining balance of unpaid annual insurance and to pay for such alterations and repairs as are essential to correct some of the faults of the vessel which have become apparent from operation and to place her in the best condition possible for operation in the coastwise trade.

The managing owner and one or two of the stockholders have endeavored for the past three weeks to negotiate a loan secured by a mortgage on the vessel and while this would have been possible six months ago, by reason of existing financial conditions, it is impossible to arrange at this time. Therefore, our only alternative is to call upon the stockholders for an assessment of 15%. We will appreciate it if you will make remittance promptly in order that we may complete needed alterations and close charters for business at attractive rates now offered us in the coastwise trade.

While we are at this time fully impressed with the fact that it was a mistake to send this vessel on her maiden trip on a long off-shore voyage to Australia, yet the charter was arranged at a time when rates were high although no allowance was made for possible costly delays in waiting for cargo, unloading, defects, or handicaps involved in changing a Ferris hull like the "Egeria" and converting her into a lumber carrying type of vessel. The results have demonstrated fully that the arrangement of 14 oil tanks in the hold have not accomplished what was anticipated, namely, the placing of sufficient

weight in the form of fuel oil low enough down in the hold to enable the vessel to carry a large deck load in addition to underdeck load and at the same time provide ample oil storage for long off-shore trips. The results have proven that the arrangement of tanks not only failed to accomplish the proper ballasting but that it operated to delay the rapid loading of the vessel. In fact, it took twice as much time both loading and discharging as would ordinarily be required by reason of limited space around hatches and general awkwardness.

On her outward trip she carried only 1,300,000 feet of lumber when she should have taken 1,600,000 under the charter at \$35.00 per thousand feet, and on the return trip she only loaded 1965 tons of coal when, under the charter, she should have taken 2300 tons at \$9.00 per ton, losing in round trip freight over \$13,000 under the charter and the loss of time in loading in the Columbia River together with loading and waiting for cargo in Australia amounted to an unnecessary delay of thirty days involving operating expenses of \$15,000.

The vessel on the other hand showed unusual qualities for steaming and seaworthiness; her fuel consumption being only 80 barrels a day which is as low as any vessel of her size of which we have knowledge.

With due consideration for this experience and the various defects enumerated, Captain McNaught of the Board of Marine Underwriters has recommended and approved of a plan whereby [85] we will take out eight of the fourteen steel tanks, four

on either side of the vessel forward, and also some of the tweendeck beams and place from 250 to 300 tons of ballast in the lowest part of the hold nearest the keelson. The effect of this alteration will be to place ballast in the lowest part of the vessel and lower the center of gravity sufficiently to enable us to load at least 600,000 feet on the deck and likewise give us capacity in the hold of approximately 1,000,000 feet and, what we consider more to the point, would enable the vessel to receive much quicker loading and discharge by reason of the increased room provided for storing away underdeck on account of removal of the tanks and beams referred to. The removal of tanks and loading of ballast will not take more than two weeks at the outside and will represent an aggregate expense of not to exceed \$5,000.00.

The vessel will retain six oil tanks holding over 2000 barrels of oil more than sufficient for coastwise trade or an occasional trip to Honolulu should rates prove attractive. She could also make the west coast of South America if the rates were attractive.

As some compensation for additional amount of capital which we are calling upon various stockholders to provide for, we would point out that the eight tanks removed cost \$5,000 a piece to install and they should be worth from \$12,000 to \$15,000 when salvaged which, of course, will take some time and will accrue to the benefit of the stockholders.

Summarizing the situation, after the improvements have been completed it is our opinion that this vessel should then be able to make reasonable

returns to the stockholders, having in mind that the coast rates to San Francisco from the Columbia River are now \$9.00 per thousand feet of lumber and \$10.50 to San Pedro, and at these rates, after allowing for even material reductions, should still enable the vessel to make a competitive showing with the best type of steam schooner operating in this trade. The reason for this observation is based entirely on the fact that the "Egeria's" fuel consumption is not greater than vessels carrying 1,000,000 to 1,200,000 feet of lumber and yet her loading capacity should not be less than 1,500,000 or 1,600,000 feet per trip. Her operating expenses, from the standpoint of crew and ship stores required, is not greater than vessels of 1,300,000 carrying capacity. Furthermore, notwithstanding a slack movement in coastwise business at the present time, which is characteristic of this season of the year, there is yet sufficient trade in sight and which has been offered to us to insure her continuous operation for several months to come.

Vessels now operating in the coastwise trade like the "Ryder Hanify" and the "Anne Hanify" and carrying 1,300,000 feet and burning 90 barrels of oil per day and which carry a crew similar in number to that of the "Egeria," are earning, even under present conditions, \$8,000 a month and have been doing this and better ever since the "Egeria" began loading in September and we see no reason why the "Egeria" with alterations completed, should not make attractive profits.

We urgently recommend your favorable consideration of our plan of financing the situation which confronts us, as otherwise the probabilities are the vessel will be libeled for small amounts and the expense and losses consequent thereto are so entirely out [86] of proportion to what our plan will accomplish that we can see no other alternative than to urge your immediate approval and will appreciate your prompt remittance. In view of your subscription being fully paid up this assessment will be considered as a first lien and will be so regarded and secured.

PCB:MW

COAST SHIPBUILDING COMPANY,

Managing Owners.

By D. W. Green.

Frank H. Ransom,

Leslie M. Scott,

Paul C. Bates,

C. C. Overmire,

James B. Kerr.

“I received Libellant’s Exhibit 4, a letter of February 22d, 1921, which is as follows:

Libellant’s Exhibit No. 4.

‘COAST SHIPBUILDING COMPANY,

Portland, Oregon.

February 22, 1921.

Shareholders SS. “Egeria”:

At the suggestion of several shareholders and due to the seriousness of the situation, we are calling a meeting of the shareholders of the SS. “Egeria”

(Testimony of Paul C. Bates.)

to be held in the Green Room of the Chamber of Commerce at 4 o'clock P. M. on Thursday, February 24th, 1921.

It is vitally important that you should attend.

Yours truly,

COAST SHIPBUILDING COMPANY,

Managing Owners.

By D. W. Green.'

Q. Mr. Bates, I hand you a letter dated February 25, 1921, and ask you what it is and where you got it?

A. This is a notice or a letter addressed on the stationery of the Coast Shipbuilding Company, directed to myself, and executed by the Coast Shipbuilding Company, Managing Owners, by D. W. Green, requesting me to remit check for \$1,000.00, which was my part.

Mr. HANEY.—I offer in evidence a letter of February 25th, 1921.

Mr. MAGUIRE.—We object to this. There is nothing in that letter binding the Coast Shipbuilding Company or binding the intervening libellant.
[87]

Received and marked Libellant's Exhibit 5, and reading as follows:

(Testimony of Paul C. Bates.)

Libellant's Exhibit No. 5.

‘Portland, Oregon, February 25, 1921.

Mr. Paul C. Bates,

Yeon Building,

Portland, Oregon.

Dear Sir:

We will be pleased to receive your check for \$1,000.

As outlined a trustee will be appointed and a mortgage on the SS. “Egeria” will be executed in his favor. He, in turn, will execute to those advancing this money a trust agreement specifying that he holds the mortgage in trust and as security.

Insurance in the amount of \$35,000.00 will also be placed upon the vessel in favor of the trustee.

As this is urgent we would appreciate very much receiving your check by Monday, February 28.

Yours very truly,

COAST SHIPBUILDING COMPANY,

Managing Owners.

By D. W. Green.’

and I also received Libellant's Exhibit 6, asking me to remit \$1,000.00 as my subscription to the mortgage, and stating that F. H. Ransom had accepted the position of trustee of the mortgage on the “Egeria,” and that I forward my check payable to F. H. Ransom, Trustee, which I subsequently did. As far as I can recollect there were present at the meeting in the Chamber of Commerce on February 24th, 1921: Mr. Gill, Mr. Lewis, Mr. Duffy, Mr.

(Testimony of Paul C. Bates.)

Edward Ehrman, Mr. Park, Mr. Buck, Columbia Wire and Fence Works, Mr. Mason—Portland Marine Supply Company; Mr. Jaeger of Jaeger Bros., Jewelry; Mr. Walker representing Roberts Bros., Mr. Don Green, representing Coast Shipbuilding Company, Mr. Sherwood, also representing the Coast Shipbuilding Company, and several others. I understood that Mr. Sherwood was an officer of the Coast Shipbuilding Company, and I would [88] say that at least three-fourths or more of the owners of the vessel were represented in that meeting.

Mr. Green made a statement to the meeting in effect that on behalf of the Coast Shipbuilding Company he was making a report of the operations of the vessel, up to that time, and the deficit created, and that it would be necessary to raise money not only to cover the deficit, but to provide sufficient funds to make alterations which would insure the economical operation of the vessel in the future. He called attention to the efforts he had made in behalf of the Coast Shipbuilding Company to raise this money in other ways, but that he had found it impossible, and that he had called this meeting after consultation with certain of the stockholders for the purpose of laying the situation clearly before it, and he was open to suggestions and asked for general discussion. Several questions were asked, and finally Mr. Jaeger got on his feet and said: 'I don't see any reason why we can't raise this money among ourselves.' He said he was willing to put up \$1,000.00 provided the money raised would be secured

(Testimony of Paul C. Bates.)

by a first mortgage on the vessel. It is my memory that something over \$20,000.00 was subscribed by those present, and after the meeting adjourned Mr. Green expressed his encouragement at the possibility of raising \$30,000.00 or \$35,000.00 because of the general response that followed the suggestion of Mr. Jaeger, and those who followed him in the subscriptions. Mr. Green said it would be necessary to raise \$35,000.00. Mr. Green said there were no other liens other than those represented in this report. There were no other liens or claims outstanding against the vessel other than the deficit caused by the trip to Australia and return, and that those putting up this money would be secured by a first mortgage. There was general conversation as to the character of the alterations that would have to be made [89] but nothing more was said that I now think of with regard to the priority of the mortgage."

Thereupon the intervening Libellant, United Sheet Metal Works called—

Testimony of John M. Joyce, for Intervening Libellant.

JOHN M. JOYCE, who being first duly sworn, testified that he was the manager of the United Sheet Metal Works, an Oregon Corporation, which had made claim for \$328.72 for materials furnished upon the "Egeria"; that it was at the time lying at the dock of the Coast Shipbuilding Company in Portland; that the "Egeria" had been

(Testimony of John M. Joyce.)

built by the Wilson Shipbuilding Company at Astoria, and the Emergency Fleet Corporation, who had had her built by the Wilson Shipbuilding Company, loaded her with miscellaneous materials and supplies and shipped those materials and supplies on the "Egeria" to their concentration yard at St. Johns, where she was unloaded and then turned over to the Coast Shipbuilding Company; that the United Sheet Metal Works furnished all the copper pipe for the ship after her voyage from Astoria to Portland.

**Testimony of Paul C. Bates, for Libellant
(Recalled).**

PAUL C. BATES resumed the stand and thereupon testified that after March 1st, 1921, F. H. Ransom personally had paid \$850.00 for insurance on the ship.

On cross-examination the witness testified as follows:

"I knew of the operating loss of the 'Egeria' some time in September, 1920, prior to the letter of December 23d of that year. Mr. F. H. Ransom and I acted in an advisory position in the conduct of the vessel's affairs part of the time; we were consulted on some occasions, and on others we were not. I was perfectly willing to do what I could by suggestions, but I didn't feel that I cared to give my time without any qualifications to it. Mr. Ransom and I were consulted and advised the Coast Shipbuilding Company with regard to the financial con-

(Testimony of Paul C. Bates.)

ditions resulting [90] from the deficit caused by her operation. The meeting on February 24th, 1921, was in response to the notice of February 14th, 1921, and of February 22d, 1921, Libellant's Exhibits 3 and 4. Mr. Green at the meeting on February 24th made no mention of any claim of the Coast Shipbuilding Company, but I had already received a letter dated November 26th, 1920, which is as follows:

'COAST SHIPBUILDING COMPANY.

Portland, Oregon, November 26, 1920.

Mr. Paul Bates,

Portland, Oregon.

Dear Sir:

There is handed to you herewith a certificate of ownership, certified by the United States Collector of Internal Revenue, covering your 1/100 interest in the S. S. "Egeria."

The vessel is now in service under the management of the Columbia-Pacific Shipping Company as operating agents.

Due to various causes and on account of the determination to add certain items of equipment not originally specified, the cost of the vessel exceeded the original estimate by approximately \$25,000.00. It is impossible at this time to give exact amount, as we still have a few purchases in question with the Emergency Fleet Corporation.

In order that the payment of dividends to shareholders may not be delayed, the Coast Shipbuilding Company has undertaken to carry this amount with

(Testimony of Paul C. Bates.)

the other shareholders, and will cause one-half of all net earnings to be paid by way of dividends and the other half to be applied in payment of this excess.

Very truly yours,
COAST SHIPBUILDING COMPANY,
Managing Owners.
By D. W. Green.'

My firm of McCargar, Bates & Lively brought action against the Coast Shipbuilding Company in July, 1920, for insurance premiums on the vessel, which was the time she went into commission, or at least that was the time she started to load in Astoria."

Testimony of L. A. Lewis, for Libellant.

L. A. LEWIS was called as a witness on behalf of the libellant and testified [91] as follows:

"I am connected with Allen & Lewis, and am personally a shareholder in the ship 'Egeria.' I was present and recall a meeting held in the Chamber of Commerce rooms in the City of Portland some time in February, 1921, with relation to the affairs of the 'Egeria.' Mr. Donald Green, a representative of the Coast Shipbuilding Company, was present. Mr. Green made a statement as to the condition of the ship, and said that the voyage and this or that had happened that had made it unprofitable. He also went into detail about the loading of the ship and the construction that they had put in the tanks, some of the pipe in the boat was a little too high,

(Testimony of L. A. Lewis.)

and by putting in a few hundred tons of ballast they would bring the weight of the ship down, and in that way could load I think an additional 1,500 feet or 1,500,000 feet of lumber, which would make quite a difference in carrying and return more income from freight. He told us that there was needed about \$35,000.00 to pay these pressing debts, and then he wanted some money to make these minor changes for the future benefit of the boat, and with that he thought the boat would be all right. He pointed out that the stockholders he thought would probably have to do it. That they (the Coast Shipbuilding Company) were large stockholders, but that they as stockholders could not put up their share of the \$35,000.00 on account of the situation they were in, and gave as his reason or excuse that they had this deficit in building the boat, but it was practically being not considered by them now, and on that basis he was appealing to the other stockholders. I thought I understood the situation so that there wasn't any hesitation on my part in subscribing for the shares as a stockholder to advance this \$35,000.00 on the understanding that there was going to be a mortgage on the boat to protect this immediate money that was advanced. [92] Mr. Green said in stating why the Coast Shipbuilding Company as a stockholder could not put up its *pro rata* that he was going to put aside this claim of the company against the boat and the mortgage would have the first preference."

Q. Mr. Green represented that because the Coast

(Testimony of L. A. Lewis.)

Shipbuilding Company had a claim against the boat they were unable to contribute toward the mortgage, but they would put that aside?

A. That was as an excuse, sort of explanation why they could not, on top of other conditions, that they were already in that much, and therefore they rightly could not be called upon; and then they didn't have it, I suppose; but that was a sort of general statement of explanation as to why the Coast Shipbuilding Company would not come through, or could not come through with their *pro rata* share. In other words, the proper way would have been for each shareholder to advance in proportion to its stockholdings, and that could not be done to start with. So then the stockholders who were there contributed the amount they saw fit, irrespective of the amounts of their ownership in the ship. For instance, I had one share, which was \$3,500.00, I think, so I subscribed \$1,000.00 on this \$35,000.00.

Q. But the representation made by Mr. Green was that the mortgage, if put on in accordance with his suggestion would be a first mortgage upon the boat, a first lien upon the boat?

A. There was no question or suggestion of any other way; no question about."

On cross-examination the witness testified:

"Mr. Green's mention of the claim of the Coast Shipbuilding Company at that meeting was in a casual way. In apologizing for the liability of the Coast Shipbuilding Company to take their *pro rata*

(Testimony of L. A. Lewis.)

he mentioned the fact that they had this claim in the [93] building of it, but that they were putting it aside at the time. I cannot quote anybody's language in a conversation where I had no idea I would have to remember accurately, because there was no question in my mind. Sometimes you remember a thing for a reason, and other times you understand perfectly but you cannot accurately state."

Q. Well, now, isn't it a matter of fact that what Mr. Green said was that the Coast Shipbuilding Company, by reason of the fact that it had had to advance out of its own funds this additional sum to complete the changes in the ship when it took the hull over from the Government, was unable to meet any part of this \$35,000.00?

A. As a stockholder, as he was asking the rest of us to do?

Q. Yes. A. That was the reason, yes.

Q. They were in other words broke; they didn't have any available cash to make any contribution to this money that was necessary to rehabilitate the ship?

A. Yes, to that extent. The point was really that, having asked us to contribute to the boat and having told us that it would cost \$350,000.00 they were not saying much about this excess cost, because in a sense they had made a statement which they had not carried out; therefore he felt the responsibility enough in not pressing that claim at that time.

(Testimony of L. A. Lewis.)

Q. Not pressing that claim at that time. Now, I will ask you, Mr. Lewis, if it is not a fact that on or about the 26th day of November, 1920, you received from the Coast Shipbuilding Company, as managing owners of the ship, a letter substantially in words and figures the same as that addressed to Mr. Bates?

A. I presume I did. I couldn't recollect now. If I [94] could search, I probably just took it and put it away, filed it away.

Q. Would you mind reading that letter, Mr. Lewis?

A. This is a letter to Mr. Paul Bates.

Q. Yes, it may refresh your memory.

A. You mean read it to myself?

Q. Oh, yes. I don't mean to read it out loud. You received one similar to that, did you not?

A. I don't know whether I did or not. I probably did, yes. I could not say yes or no, now, because I paid no attention to it.

Q. I see. Well, now, I will ask you if it is not the fact that, as a shareholder in the ship, you executed, I suppose it would be really a marine power of attorney, there, to appoint this company as the managing owner?

A. I probably did, although I don't accurately recall now.

Mr. MAGUIRE.—Is there any question upon that, Mr. Haney?

Mr. HANEY.—No, there is not. As a matter of fact, all these people executed it.

(Testimony of L. A. Lewis.)

Q. Mr. Green appearing there at that meeting appeared there to make a report on behalf of the managing owner, did he not?

A. I presume he was there in behalf—yes, of course, because he had been managing owner, and he belonged to the company, but he was there really to ask the stockholders to help him out in the emergency of raising this money, because he owed money, or the ship owed money through their handling, and it had to be paid immediately. The purpose of it was to get this \$35,000.00 if possible from the stockholders—the shareholders.”

Testimony of Edward Ehrman, for Libellant.

EDWARD EHRMAN, being called as a witness on behalf of the libellant testified [95] as follows:

“I am a wholesale grocer—Mason-Ehrman & Company—and a shareholder in the ship ‘Egeria.’ I recall and attended a meeting held some time in the month of February, 1921, at the Chamber of Commerce wherein the affairs of the ship ‘Egeria’ were discussed. Mr. Donald Green addressed the meeting, and after explaining the condition of the ship he said the steel tanks in the boat must be removed to make more room for cargo space, and it would cost a considerable amount of money to take them out. I don’t remember how much. There were other conversations which I don’t recollect which resulted in most of those present agreeing to put up this amount of money; Mr. Green suggested the necessity of having this money to meet these

(Testimony of Edward Ehrman.)

obligations, to pay the boat's debts and to make some repairs. He said that the money so advanced would be a first lien upon the vessel, but I don't think he mentioned anything about its priority over any lien of the Coast Shipbuilding Company, but I put up more money on the assurance that it would be a first lien. I had no intention of putting up any money for assessments or anything else, but I felt safe in advancing that much more on the boat on the assurance that it would be secured by a first lien."

On cross-examination the witness testified:

"Mr. Green said nothing of the lien of the Coast Shipbuilding Company, and I understood that Mr. Green was in the meeting as representing the managing owners who had charge of the boat for all the shareholders."

Testimony of C. B. Duffy, for Libellant.

C. B. DUFFY was called as a witness on behalf of the libellant, and testified as follows:

"I am the Secretary of the Eastern & Western Lumber Company, which corporation is the owner of shares in the ship '*Egeria*.' I have some acquaintance with the affairs of the ship since the [96] Eastern & Western Lumber Company became a shareholder, and am acquainted with Donald Green of the Coast Shipbuilding Company, and knew him prior to the meeting held in the Chamber of Commerce with reference to what should be done with the '*Egeria*.' In the office of the Eastern &

(Testimony of C. B. Duffy.)

Western Lumber Company in company with Mr. Ransom, Mr. Green stated that it was necessary to raise money to make certain changes in the vessel, and there was a deficit on account of the trip to Australia, and money had to be raised to provide the ship with necessary funds. Mr. Green assured Mr. Ransom and myself at that time that they were willing to waive any claims they had against the vessel, and if the different people would put up this money, it would be a first mortgage lien on the vessel. Afterwards at the meeting on February 24th in the Chamber of Commerce, at which I was present Mr. Green assured us that the proposed mortgage would be a first mortgage lien, and for that reason our company agreed to put in an additional \$5,000.00 on the mortgage with the understanding that it was a secured lien—a first lien—on the vessel prior to anything else that existed. Mr. Green said that they were willing if these people would put up the money to wait for their money and to take any amount that there might have been on the overage of this cost out of the earnings of the vessel, and that the mortgage would be a first lien; that the Eastern & Western Lumber Company put money into the mortgage on Mr. Green's representations."

On cross-examination the witness testified as follows:

"Mr. Ransom and myself were handling the matters as far as the Eastern & Western Lumber Company were concerned, and determined when Mr.

(Testimony of C. B. Duffy.)

Green approached us in our own office that we would put up an additional \$5,000.00, provided it was secured as a first mortgage lien. My understanding was that Mr. Green made those representations at the Chamber of Commerce meeting that they would wait [97] on any claim they had and take it out of the earnings of the vessel. They were glad to get us to put up this money so as to get the vessel in shape to go ahead. As I understood Mr. Green at the meeting he said that they were waiving their rights providing we put up this money. The original suggestion was that every shareholder put up his *pro rata* share of the amount necessary to take care of this, but he said that his people could not come through nor would, as I understood him, the Bankers Discount Corporation put up any more money, but if we would put up this money we would be given a first mortgage lien on the vessel. I don't know that Mr. Green stated at the meeting of February, 1921, that the Bankers Discount Corporation wouldn't put up any more money, but different times he assured me that they would not put up any more money when we asked them to come in with us. Mr. Green never told me that he was representing the Bankers Discount Corporation, but he did say that he had seen Mr. Wilson and they wouldn't put up any more money. I think it is probably true that the statement with regard to the Bankers Discount Corporation did not come up until later after the mortgage money was put up, but later on after this mortgage was

(Testimony of C. B. Duffy.)

placed on there there was an additional amount to be raised and we asked everybody to come in on the mortgage, which they, the Bankers Discount Corporation, would not do. I think the entire amount of the mortgage with the exception of \$3,500.00 was contributed before July, 1921. I think Mr. Green approached them to take a part of the mortgage. I don't know that to be a fact, but I believe that was what happened. I know that the Coast Shipbuilding Company was a corporation, and I know that back in 1920 they had a claim in excess of \$25,000.00 against the vessel, which was to be taken out of the excess earnings, and they sent us a letter to that effect. The shareholders who now hold a first lien prior to that of the Coast Shipbuilding Company, [98] which was the largest individual shareholder, never procured any written waiver or release from the Coast Shipbuilding Company."

Testimony of J. P. Rasmussen, for Libellant.

J. P. RASMUSSEN, being called as a witness on behalf of the libellant, was duly sworn, and testified as follows:

"I am in the paint and oil business, and am a shareholder in the ship 'Egeria.' I was present at a meeting in February, 1921, in the Chamber of Commerce with regard to the affairs of the 'Egeria.' I know Donald Green by sight. He was present at and addressed the meeting and said that he was unable to put up any money. For my part

(Testimony of J. P. Rasmussen.)

I understood that we would have a lien, there would be no prior lien, if we put up that money. Mr. Green stated that his company was unable to put up any money, but my recollection was he waived any prior rights. I don't believe Mr. Green was the man that made the proposition of giving a mortgage to secure the money advanced, but he discussed it. I believe it was generally understood from his statement that the mortgage would be a first lien on the boat. That was my understanding."

Q. Why did you put any money into the mortgage?

Mr. MAGUIRE.—Objected to as not material to any issue in this case.

Mr. HANEY.—What is not? My question?

Mr. MAGUIRE.—Yes.

Mr. HANEY.—I think it is. I asked the witness why he put money into the mortgage. That is objected to. Now, it seems to me we ought to be entitled to show that he put money in there relying upon the representation that the mortgage would be a first lien upon the boat.

COURT.—I think that may be answered.

Mr. MAGUIRE.—Your Honor will allow us an exception?

COURT.—Yes.

A. I certainly believed that that was the case. If I [99] did not know that it would be a first lien, I never would have put a dollar into it. I would rather lost what I had put in before."

(Testimony of J. P. Rasmussen.)

On cross-examination the witness testified as follows:

“From what Mr. Green said the Coast Shipbuilding Company could not raise any part of this \$35,000.00. I heard the testimony of Mr. Bates, Mr. Ehrman and Mr. Lewis to the effect that nothing was said at the meeting about the claim of the Coast Shipbuilding Company.

“Mr. Green made no mention of any claim and I didn't hear Mr. Green make any statement to that effect.”

Testimony of C. A. Parks, for Libellant.

C. A. PARKS, being called as a witness on behalf of the libellant, and being first duly sworn, testified as follows:

“I am office manager of Mason-Ehrman Company, who are not owners in the ship ‘Egeria,’ but Mr. Ehrman, who is a member of the firm, is. I individually own one share in the ship, and was present at the meeting of the Chamber of Commerce in February, 1921, where the affairs of the ‘Egeria’ were discussed. I know Donald Green, who was there. Mr. Green made a rather lengthy statement, advising the people at the meeting that the boat was showing a deficit; that it needed a lot of repairs necessary for operation; that he had tried to negotiate loans through banking and financial interests in the city, but was unable to make any headway, and the meeting was called for the purpose of getting the shareholders to make up a fund sufficient to take care of the obligations against the boat of

(Testimony of C. A. Parks.)

approximately \$35,000.00. As I recollect his remarks he stated in order to get the people to subscribe that were at the meeting that whatever money was subscribed and put up would be considered a first lien on the boat covered by ample security, and there would be absolutely no doubt but what we would all get our money back. As a matter of fact it would be considered the first obligation of the [100] boat. Consequently, I think \$20,000 was subscribed. Later on after March 1st, 1921, Mr. Green came to me trying to make up the difference between \$20,000.00 and \$35,000.00. He stated that he had not received enough to make up this entire deficit, or fund that was necessary for the purpose mentioned at the meeting. I subscribed \$1,000.00 in the matter, and subsequently I raised that to \$5,000.00 simply on the assurance of Mr. Green that it would be absolutely protected by a first mortgage or guaranty that I would get my money back, otherwise I would not have put it in. There would be no reason for my putting money into it unless I was assured that I would get it back."

Upon cross-examination the witness testified:

"In due form I and the other shareholders of the Ship had constituted the Coast Shipbuilding Company our managing agents in the operation of the ship, and this meeting was called in accordance with two notices—one of February 22d, and the other of February 14th. The statement in the letter to the effect: 'Therefore our only alternative is to call upon the stockholders for an assessment of 15%'

(Testimony of George E. Walker.)

was for the purpose of raising this fund to make these changes and meet the deficit.”

Testimony of George E. Walker, for Libellant.

GEORGE E. WALKER, being called as a witness on behalf of the libellant, was first duly sworn, and testified as follows:

“I am in the drygoods business, and am an officer of the corporation of Roberts Bros., which was a shareholder in the ‘Egeria.’ I am the member of the corporation who gave attention to the affairs of the ‘Egeria.’ I know Donald Green, and was present at the meeting in the Green Room of the Chamber of Commerce in February, 1921, at which Mr. Green was present. Mr. Green represented that mortgage to be a first lien on the ship, and that there were no other outstanding liens at that time. My company contributed to the mortgage [101] upon the assurance that it was absolutely gilt-edged security, and was secured by a first mortgage on the boat. At the meeting on February 24th Mr. Green said that the Coast Shipbuilding Company had exceeded the cost of construction of the boat by some forty odd thousand dollars, I believe, but that they were content to wait for their claim until such time as they were able to collect it from the earnings of the ship. This was my recollection of his statement. That they were unable to participate in the mortgage because they held this claim because they were already in it to that extent, and could not afford to put up any more money, but that they would be willing to wait until the earnings of the

(Testimony of George E. Walker.)

boat warranted a collection of that account, Mr. Green stated that the mortgage would be a first lien."

Upon cross-examination the witness testified:

"I understood at the time of the meeting that there were some \$43,000.00 in an unsettled account supposed to be held by the Coast Shipbuilding Company. That this was mentioned at the meeting and Mr. Green advanced that as the reason why his company (the Coast Shipbuilding Company) could not participate in the mortgage or take any further share in the boat. I believe that the matter of the shareholders increasing their shares, taking additional shares, had been threshed out prior to the meeting. An assessment or call had been made upon the shareholders proposing an assessment of 15%, I think, but the response had not been very satisfactory—not sufficient to cover the liability incurred by the boat on its voyage to Australia and to cover the expense of making alterations in the hull to increase its carrying capacity. Ways and means had to be created to raise enough money to pay these liens, the loss and deficit incurred [102] by operation of the ship and to make these necessary changes. That was said to be about \$12,000.00 or \$15,000.00 loss in operating the boat, and \$25,000.00 to make the necessary changes in the hull. The effect of the proposal at the meeting was that the shareholders were creating a trustee or a committee to raise the money, and a mortgage as a first lien on the boat was considered the only way the

(Testimony of George E. Walker.)

money could be raised. A mortgage as a first lien, absolute guaranty, with a fair rate of interest as an investment on the ship was offered to anyone who might wish to take part of it. The advantage of the mortgage was discussed at the meeting, simply that it was a 10% investment that was absolutely gilt edged, a first lien on a boat said to be worth \$350,000. There was no discussion at the meeting as to the advantage the shareholders would have if they had this mortgage upon their own property, which would prevent any strangers from coming in there and making claims for bills that were incurred in subsequent operation of the ship. I didn't hear it discussed if it was."

Testimony of Jas. V. Mason, for Libellant.

JAS. V. MASON, being called as a witness on behalf of the libellant, was duly sworn, and testified as follows:

"I am in the shipping business, and my company or business name is the Portland Marine Supply Company, Oregon Stevedoring Company and Pacific Marine Construction & Repair Company. The Portland Marine Supply Company was the owner of shares in the ship 'Egeria.' I know Donald Green, and I had a conversation with him prior to the meeting at the Chamber of Commerce in February, 1921, in relation to raising money to take care of claims against the 'Egeria.' This conversation was in my office three days, or may be four days, before the meeting held in the Chamber of Commerce. I discussed with Mr. Green the claim

(Testimony of Jas. V. Mason.)

of the Coast [103] Shipbuilding Company. He didn't have very much to say for the simple reason that I did not consider that he had any claim. He told me it was something in connection with supplies or purchases from the Emergency Fleet Corporation, some rebates or something in connection with that; that they really weren't enabled to arrive at the real cost of the vessel. So I asked him, I says: 'What is the reason in connection with the Emergency Fleet Corporation, because they won't let you take anything back, so there should be no discrepancy or arrangement or agreement or rebate in connection with that, as far as the Emergency Fleet Corporation is concerned; so I don't see, if you have any claim why this thing couldn't have been fixed up quite a considerable time ago, because you cannot expect to have any claim against them as far as the vessel is concerned.' He discussed with me the necessity of raising money to take care of the 'Egeria,' and I told him I didn't think it practicable, because I didn't think the boat was worth it. He suggested that we raise the money through borrowing at the bank, and he asked me if I could do anything at my bank, which was the Northwestern National Bank. I told him I probably could if I agreed to indorse the note, I could get the money, but at the same time I didn't think it was feasible, because I didn't think we ever had the chance of getting our money back. He told me that the mortgage had a prior lien over the claim of the Coast Shipbuilding Company on the 'Egeria.' I was at the meeting in the Chamber of Commerce

(Testimony of Jas. V. Mason.)

and Mr. Green was there, and I had a meeting with Mr. Green about 15 minutes before the general meeting about the same matter, in which he asked me to give my support to his suggestions; that he had already spoken to Mr. Ransom and Mr. Duffy, and if I would agree on it, on account of my knowledge in the shipping business that [104] all the other gentlemen present would do exactly what I would do. H suggested that we would mortgage the boat for about \$30,000.00, and that we would try and subscribe the money and get it the best way we could. Why, I asked him, I says, "Of course, we will get a first lien on the boat?" "Absolutely." I says, "How about this \$25,000.00 you told me a couple of days ago with this Emergency Fleet Corporation?" "Well," he says, "you know very well," he says, "that you will have a first lien." "Well," I says, "we certainly will have, or else I won't get up and talk to these gentlemen and persuade them to put their money in."

"At the meeting I was sitting alongside Mr. Green, and before they elected someone as chairman of the meeting I asked Green again, "Now, I will put up a little money on this thing. I will put up \$2,000.00, providing one thing is understood between you and I, that what money I put up, and what money anybody else puts up is a first lien on the boat, and there's no other claims against it that take preference over this lien." He said "Absolutely," and we shook hands on it. As nearly as I can remember at the meeting Mr. Green said this would be a first lien on the ship, the money that was ad-

(Testimony of Jas. V. Mason.)

vanced, if we collected this money or if we raised this money. You understand that I put up \$2,000.00 there, and then he came to me two or three weeks afterwards and said he was short of money, and said "I want another \$1,000.00 from you." I says, "You understand what you told me before, that this is a first lien, no other lien." "All right." "Well," I says, "All right, I will pay \$1,000.00." Mr. Green told the assembled shareholders at that meeting that it would be necessary to raise \$30,000.00. I suggested that the money be secured by a mortgage on the boat, a first mortgage, [105] a first lien. I don't remember what Mr. Green told the shareholders about the priority of that mortgage, whether it was the first, second or otherwise, but I know what he told me when I was sitting alongside him when he got up to speak. The effect of what he said to the shareholders was this: That we had a prior lien, and that all other liens or obligations in connection with the 'Egeria,' they would forego that, for the simple reason that what liens they had they could not prove at any time, as I told him how impossible it would be to do, for the material supposed to be bought for this boat never had gone into the boat. As a matter of fact, some of the material that was bought for the 'Egeria' is now down in my store in the shipyard, that I bought myself."

COURT.—Did he tell that to the meeting?

A. He told me that, because I knew various little things in connection with the thing. That was the reason I asked these other gentlemen, it was on my

(Testimony of Jas. V. Mason.)

say-so, in my experience, I convinced them to put in this money, which I put up \$2,000.00, and I think there was one or two other gentlemen put up more than I did. I put up my money because I thought I would get it back, and I felt that it was secured beyond any other claims; there was no question about it, and I convinced the other gentlemen that were there, too. After the money was advanced on the mortgage and when the boat was in the harbor at San Pedro Mr. Green gave me the first information about the trouble there. It was prior to April 16th. It was in the neighborhood of October 10th or 12th. I made a trip to San Pedro. When I arrived there the 'Egeria' was libeled for the wages of the seamen, and the United States Marshal was in possession of the boat. The Master of the boat was Captain C. J. Swenson. I held a meeting in the attorney's [106] office and talked to the marshal, and he told me to go to Los Angeles to see the clerk. I advanced \$6,600.00 to the Master to release the ship, and obtained Intervening Libellant Mason's Exhibit 7, which was thereupon offered in evidence. The intervening libellant Bankers Discount Corporation objected that the exhibit was irrelevant, incompetent and immaterial to any issue in the case. The court overruled the objection, and allowed an exception, and Exhibit 7 was admitted, and reads as follows:

Intervening Libellant Mason's Exhibit No. 7.

"Whereas, the Steamship "Egeria" being in the Port of San Pedro, California, without funds with which to pay the wages of the mariners thereof,

port charges, etcetera, and the said vessel having been libeled for said mariners' wages and there were threatened and impending libels for other wages and charges against said vessel.

And Whereas the owners, having failed to provide the money with which to pay said wages and port charges, James V. Mason, as trustee for the mortgagee of said vessel has this date advanced to me the sum of \$6600.00 with interest at 8 per cent per annum, payable quarterly from this date, as master of said steamship for and on behalf of said ship, and for the payment of the wages, port charges, and for the further purpose of enabling said vessel to reach her home port of Portland, Oregon.

The above sum of money was advanced on the exclusive credit of the said steamship "Egeria," her engine, tackles, apparel, furniture, etc.

Dated San Pedro, California, October 18, 1921.

\$6600.00. Dollars only.

C. J. SWENSON,

Master of Steamship "Egeria."

J. E. BENN,

Witness."

COURT.—That was advanced on behalf of the trustee?

Mr. HANEY.—Yes, he says he advanced it for and on behalf of the trustee.

Mr. MAGUIRE.—I move to strike out this exhibit. I would like to enlarge my objection, your Honor, to the effect that this [107] has not been properly proven, and move that the exhibit be stricken.

(Testimony of Jas. V. Mason.)

COURT.—Why hasn't it been properly proven?

Mr. MAGUIRE.—Because under the statute, a document which has been witnessed can only be proven by the witness.

Mr. HANEY.—I would like to ask this witness a question about the witness on that. I don't know who that is.

Q. What is J. E. Benn, who purports to be a witness there?

A. He was a clerk in the attorney's office that drew it up.

Q. Were you present when that document was signed? A. Absolutely.

Mr. MAGUIRE.—Objected to as irrelevant and immaterial; an improper way of proving it.

COURT.—The objection is overruled. You took this receipt yourself?

A. In the attorney's office, yes, sir, from the captain.

COURT.—From the captain?

A. Before I advanced him the money to pay off his crew. He had the ship libeled.

COURT.—You saw the captain sign the receipt?

A. Absolutely, sir. I was right there—before I handed him the money.

COURT.—The Court will overrule the objection. (Exception allowed.)

“I directed the boat to leave San Pedro for Portland, and she left in 36 hours, and arrived in Portland on the 26th of October, 1921.”

Q. Now, after that time, what, if any money, did you [108] advance for that boat, for any other

(Testimony of Jas. V. Mason.)

purpose, and for what purpose did you advance money?

Mr. MAGUIRE.—Objected to, as not being within the issues of this case, and irrelevant and immaterial.

(Objection overruled. Exception allowed.)

A. I advanced this money for pilotage, completing payment of the wages of the men when they arrived in Portland, the captain's wages, the dock charges, the pilotage up the river. I also had the vessel—I had to get the boilers cleaned out, all the topping gear and everything else taken down and stowed away in the hold so it would not rot, the engines oiled down and put in shape for an indefinite period of laying the vessel up, so she would not deteriorate, and arrangements for tonnage to take the vessel up to her permanent berth where she is now.

Q. How much money did you advance for the purpose?

Mr. MAGUIRE.—My objection may run to all of this without the necessity of interrupting?

COURT.—Yes.

"I have receipts here for \$645.51 and \$845.58. You understand that if these obligations hadn't been taken care of there wouldn't be any vessel now to be having this trouble over. Intervening Libellant Mason's Exhibit 8 is the payroll for laying up the vessel for an indefinite period, oiling the engines, putting the ship in position to lay her up. At that time she was at St. Johns Terminal No. 3. The amount paid there was \$264.39.

(Testimony of Jas. V. Mason.)

“Intervening Libellant Mason’s Exhibit 9 for identification is \$15.05—lights on the ship at Astoria, where she went alongside of the dock and did not have any steam.

“Intervening Libellant Mason’s Exhibit 10 was for taking [109] off and on the pilot of the vessel when she came in. They have a flat charge of \$5.00 which every ship pays at the port. It was necessary to protect the vessel and enable it to come up to Portland to lay up.

“Intervening Libellant Mason’s Exhibit 11 is as follows: They had some fresh stores aboard the vessel, consisting of groceries, vegetables, laundry supplies, etc. I brought them up town and used them, and sold them, and credited the ship with that amount—meat and vegetables, otherwise, if I had left them there they would have been spoiled. Also the laundry I took to lock up, otherwise it would have been stolen off the vessel.

“Intervening Libellant Mason’s Exhibit 12 is for \$40.00, for telegrams sent by the Coast Shipbuilding Company and myself with instructions to the Captain at San Pedro as to what to do, while the vessel was in custody of the United States Marshal. They were for the benefit of the vessel.

“Intervening Libellant Mason’s Exhibit 13 were telegrams instructing the captain of the vessel what to do and that I was on my way down to release it. It was for the benefit of the boat and necessary.

“Intervening Libellant Mason’s Exhibit 14 was the same thing—telegrams to McCormick & Mc-

(Testimony of Jas. V. Mason.)

Pherson, Rinder & Cook and C. J. Hendry Company to advance money to enable the boat to proceed, which they did not do, and it was necessary for us to proceed to San Pedro for that purpose. These telegrams represented by Exhibit 14 were telegrams sent in an effort to avoid going to San Pedro to get the boat out of the possession of the United States Court where it was libeled.

"Intervening Libellant Mason's Exhibit 15 is a telegram for \$1,000.00 to the Captain to go ahead and advance the crew a [110] certain amount of money and make arrangements to enable the vessel to proceed as soon as the balance of the money was there. That was for the benefit of the boat so as not to delay it.

"Intervening Libellant Mason's Exhibit 16 is my expenses to San Pedro and return, in looking after the interests of the boat when I went down to get her relieved from the Court. The amount was \$317.65. I was away ten days.

"Intervening Libellant Mason's Exhibit 17 is \$1.50 tax which we had to pay when we borrowed \$7,500.00 from the United States National Bank. It was my personal note, and I am personally responsible, but I secured the signatures of some of the mortgagees to secure that money."

It was there discovered that the intervening libel of Jas. V. Mason was filed, but no order was taken and no bond put up and no answer filed, and it was then stipulated that the matter may be considered as having been filed with a bond and order taken, and

(Testimony of Jas. V. Mason.)

that the proctor for the Bankers Discount Corporation and Coast Shipbuilding Company may have a week to answer, and that the proctor for the Intervening Libellant Mason will file the bond and complete his record, and that the case would proceed as though the record had been completed on both sides.

“Q. Mr. Mason, with respect to the items aggregating \$856.13, I will ask you whether or not you advanced those items for and on behalf of the “Egeria,” and if so, in what sums, and for what purposes?

Mr. MAGUIRE.—Objected to as not being a proper item of maritime lien, and that no proper foundation has been laid.

COURT.—When you say on behalf of the “Egeria,” you mean on behalf of the Trustee?
[111]

Mr. HANEY.—No, for the boat itself. This is money advanced by Mr. Mason after the boat was brought back to Portland, in attempting to take care of her and keep her from being ruined, and get her permanently docked, for which he has filed a libel.

COURT.—That is on the same basis as the \$6,000?

Mr. HANEY.—Yes, on the same basis, but not for the same things.

COURT.—I understand, but they come under the same class?

Mr. HANEY.—Yes.

(Testimony of Jas. V. Mason.)

COURT.—They were not advanced in behalf of the Trustee?

Mr. HANEY.—No, sir. They were advanced at his request and by his knowledge, but they were advanced by Mr. Mason.

COURT.—That receipt would indicate that that was advanced on behalf of the Trustee.

Mr. HANEY.—Well, I don't know how the receipt reads—I have forgotten—but, as a matter of fact, it was advanced with the consent of the Trustee; but, as I understand it, it was advanced by Mr. Mason.

A. I took the receipt on behalf of the Trustee.

COURT.—That was my understanding of this receipt. I was trying to get it clear in my mind.

A. This is an agreement, your Honor, between the mortgagees of the vessel to take care of this vessel.

COURT.—This is: "Whereas the owners having failed to provide money with which to pay said wages and port charges, James V. Mason, as Trustee, for the mortgagee of said vessel."

Mr. HANEY.—Yes, sir.

COURT.—Very well, I understand it.

Q. Now, Mr. Mason, again directing your attention to the items aggregating \$856.58, will you please state what those items [112] were, and in what amounts, and when they were advanced?

Mr. MÁGUIRE.—I don't believe your Honor has ruled upon my objection yet.

COURT.—I will overrule the objection.

(Testimony of Jas. V. Mason.)

Mr. MAGUIRE.—The Court will permit me an exception?

COURT.—You may have your exception. Of course, at the final argument this ruling might be subject to be recast.

“With regard to the items of expenditure aggregating \$856.58 it was made up as follows: Towage off Sand Island, Columbia River to Astoria, when the vessel had broken down and was not under command, \$82.40; towage paid the Port of Portland from St. Johns to the Portland Lumber Company, where she is lying, \$82.40; October 25th, Columbia River Bar Pilots, \$50.00; for bringing vessel from Astoria to Portland or St. Johns Terminal No. 3; November 6th, pilots, \$15.00, for moving vessel from St. Johns to her permanent berth at Portland Lumber Company; October 26th I hired a watchman and agreed to pay him \$100.00 a month. On December 9th I paid him \$200.00. I paid the Portland Lumber Company \$89.00 for berthing the vessel from November 4th to January 31st. That reduces so that my claim is \$845.58.

“While the vessel was at St. Johns Terminal No. 3 from October 26th to November 4th, before I moved it to the Portland Lumber Company I paid the Dock Commission \$48.24. On November 12 the laundry of the vessel, blankets and everything in connection with it, were lying all over the ship and I had them packed away and sent to the State Laundry Company to be laundered. I paid them \$38.65 for that. On December 14th I paid the St. Helens

(Testimony of Jas. V. Mason.)

Ship Company for repairs to the vessel on August 8th, \$100.84. On December 1st I sent notices to the shareholders of all this that I did and accounts and different things, how much I had on hand, [113] and how much would be necessary to take care of this vessel. They were multigraph copies and cost \$28.38 and \$20.66. On December 9th I paid the Portland Marine Supply Company \$2.55 for coal oil for the vessel, it having no steam, and the electric lights not working in the evening. On December 14th I paid the United States National Bank \$45.20 interest on that note. I didn't think that should be paid in, but I put it in anyhow because I paid it."

COURT.—Do you think that should be in?

Mr. HANEY.—I don't think that is a lienable item, your Honor, but I put it in.

A. I didn't think so myself, your Honor, but I put it in because I had a receipt for it.

COURT.—Very well.

A. That amounts to \$845.58 and includes the \$45.-20 interest. None of these moneys have been repaid to me.

(Libellant Mason's Exhibit 18 for identification are the receipts showing this expenditure.)

Mr. HANEY.—I offer that in evidence.

Mr. MAGUIRE.—I object to each and every item of the exhibit upon the ground that no foundation has been laid for their admission; that they and each of them are not lienable items, and particularly are not maritime liens.

Objection overruled.

(Testimony of Jas. V. Mason.)

Marked Intervening Libellant Mason's Exhibit 18.

Q. Mr. Mason, I hand you Intervening Libellant Mason's Exhibit 19 for identification, and ask you if that covers the item of \$6,600.00 testified by you as having been advanced to the captain?

A. \$6,600.00 and I advanced him \$53.86 to complete this [114] when he arrived in Portland.

Q. But that is the item that you testified as having advanced the captain, and for which you have receipts?

A. Yes. The captain handed me receipts.

Mr. HANEY.—I am going to offer this in evidence.

Mr. MAGUIRE.—Let the same objection go to this exhibit as to the one immediately preceding it.

Objection overruled—exception allowed.

Marked Intervening Libellant Mason's Exhibit 19.

Upon cross-examination the witness testified as follows:

“I have been connected with the marine business all my life. I am president of Portland Marine Supply Company, vice-president of the Oregon Stevedoring Company, Pacific Marine Construction & Repair Company. We operate a repair barge. I am familiar with and the operation of the same, through all of the years I have been in that business. Mr. Green discussed with me on one or two occasions the matter of the claim of the Coast Ship-

(Testimony of Jas. V. Mason.)

building Company for the amount in excess of approximately \$25,000.00, which at that time was an unliquidated amount. I told Mr. Green and the Coast Shipbuilding Company that they had no claim against the ship by reason of these amounts. I gave him the same reasons I explained, how could he come on with an explanation the same as what he had told me, and according to his letter that it was payments that had not been arranged or regulated as far as the Emergency Fleet Corporation is concerned. So I asked him at that time, "Well, how is it? They don't owe you any money, do they?" "Well," he says, "as far as the material we have been getting down there." I said "You had to pay for it." I says, "You do the same as I do. If you want anything you go down and select it, you get a price for it, they tell you how much it is, you [115] give a check, and you cannot return it." Sometimes they don't even give you half you buy, and then you have no way to get your money back. So I couldn't understand why he would put that in his letter at all, so far as the Emergency Fleet Corporation was concerned.

"This was Mr. Green's first venture with ships. Mr. Green didn't rely upon my judgment and experience because I was opposed to the vessel all the time and the way it was handled, and he kept away from me until he got in trouble, and then they came when they thought they would need some of my money. They didn't come to me for advice on any matter until the ship got in trouble in San Pedro

(Testimony of Jas. V. Mason.)

and then they figured that probably I was the only one who could get any money to get the vessel out of this, because everybody else was disgusted with the vessel, myself included.

Q. Now, you say you had a conversation with Mr. Green immediately prior to this meeting with regard to this claim, that you had again told him that he had no claim?

A. I had a conversation with Mr. Green.

Q. That the Coast Shipbuilding Company had no claim rather?

A. I had a conversation with Mr. Green four days before. I couldn't understand why he couldn't arrive at the cost of the vessel. I couldn't understand how he could prove that it was his material that went into this vessel, how he could tell, because they owed me some money, and I couldn't tell; I couldn't tell my material, if it went into the vessel; just the same as I told him at the time about these valves. He bought the valves from the Emergency Fleet Corporation, the Coast Shipbuilding Company to put in this vessel. When they found they didn't fit [116] the vessel, or were of no use to the vessel, they placed them in their yard. I don't know who paid for them. Somebody paid for them. Maybe those other people may have put up some money. Maybe they think they are in the vessel, but they are not in the vessel.

Q. Were these valves, you say?

A. Yes, valves. They found that they were not suitable. They paid the Emergency Fleet Corpora-

(Testimony of Jas. V. Mason.)

tion for them. They wouldn't take them back. They had the Coast Shipbuilding Company's money—they wouldn't take them back. I bought them later. They were marked distinctly with tags for the "Egeria." They had gone somewhere else and I paid for them. So I explained a lot of these things, how could he tell? How did he have a claim? Was it a claim for commission, or was it a claim for floating the business, or what was it for? I couldn't see why the boat cost any more money. It seemed to me it was impossible. He never could prove the claim to me.

Q. Did you offer to go over the books with him?

A. They didn't have any books, I don't think.

Q. Just answer the question. Did you offer to go over the books with him?

A. No, I didn't. I didn't.

Q. Now, being in the shipping business, you were familiar with the provisions of the 1920 Shipping Act in regard to ship mortgages?

A. Yes, I believe it was. I believe I am.

Q. You were at that time?

A. No, not at that time, I was not. I didn't find out about those—what do you call them again, what do you say, about the principles of the Act, or whatever it is. I didn't find out [117] that until I was down in San Pedro lifting the libel off this ship. And I learned a lot of things down there."

Testimony of H. M. Montgomery, for Libellant.

H. M. MONTGOMERY, being called as a witness on behalf of the libellant, was duly sworn and testified as follows:

“I am a deputy collector of customs and custodian of the records of the Collector’s office in the Port of Portland, with regard to the documentation of ships. Permanent Register No. 7 shows that the ship ‘Egeria’ was permanently registered under date of September 9th, 1920. On page 28 of Volume VI of the Records of Bills of Sale appears a bill of sale under date of September 15th, 1920, of interest in the ship ‘Egeria’ from the Coast Shipbuilding Company to H. B. Ainsworth and thirty-seven other people, by which 61/100 of the ship was conveyed to them. The ‘Egeria’ was redocumented by reason of this bill of sale in Permanent register No. 10 under date of September 21st, 1920. At page 77 of Volume G the Records of Mortgages of registered vessels in the office of the Collector of Customs, Portland, Oregon, appears a mortgage from the Coast Shipbuilding Company and H. B. Ainsworth and all other owners of the steamship ‘Egeria’ to F. H. Ransom, Trustee. Attached to the mortgage is the affidavit of Donald W. Green, Secretary of the Coast Shipbuilding Company, managing owners, that this mortgage was executed on the 1st of March, 1921, to F. H. Ransom, Trustee, by the owners of the ‘Egeria,’ by the Coast Shipbuilding Company, managing owner of said vessel, to secure the payment of \$35,000.00

(Testimony of H. M. Montgomery.)

in which sum the said owners are justly indebted to said F. H. Ransom, Trustee, and was made in good faith and without any design to hinder, delay or defraud any existing or future creditor of the mortgagors of any lienor."

It was thereupon stipulated by proctors for the respective parties that the matter of determining the attorney's fees may be fixed by the Court without any proof in the event that the Court [118] grants priority either to the libellant or intervening libellant Bankers Discount Corporation. Thereupon the Intervening Libellant F. H. Ransom, Trustee, and the Intervening Libellant Jas. V. Mason rested their case, and thereupon the Intervening Libellant Bankers Discount Corporation moved the court to dismiss the intervening libel of Jas. V. Mason upon the ground and for the reason that there is no foundation laid as to the authority of J. V. Mason to make the payments or incur the expenditure set forth in his libel. Further, that the items which he sets up in his libel are not lienable items and do not constitute maritime liens and are without the jurisdiction of the Court to enforce.

Thereupon the intervening libellant Bankers Discount Corporation further moved the Court that there be stricken from the record all testimony and each and every part thereof on behalf of the libellant J. V. Mason upon the ground that there has been no foundation laid, and particularly that libellant Mason's Exhibit 7 has not been properly proven.

(Testimony of J. L. Dunlap.)

Thereupon the intervening libellant Bankers Discount Corporation further moved the Court that the libel of F. H. Ransom be dismissed upon the ground and for the reason that it is an attempt upon the part of the owners of the ship to create a lien in themselves as against themselves and against their ship, and that their proper proceeding is not in admiralty, but is for a dissolution of the partnership existing between them, and an accounting.

Thereupon the Court took said motions under advisement until the argument, and thereupon the intervening libellant called the following witnesses, who being duly sworn testified as follows:

Testimony of J. L. Dunlap, for Intervening Libellant.

J. L. DUNLAP.—I live in Portland, and am an accountant, and was employed by the Coast Shipbuilding Company from the beginning of their [119] work until they sold out the last of the equipment in its yard last fall, a period of about four and one-half years. As accountant I had charge of the books, and records of accounts of the Coast Shipbuilding Company, and am familiar with those books and records and know that the steamship "Egeria" was altered during the period of my employment by that concern and I had charge of the records of the cost of that ship. I have before me those books, and have had 20 or 30 years' experience as an accountant. I have prepared from the books of the Coast Shipbuilding

(Testimony of J. L. Dunlap.)

Company a statement of the cost of that vessel, and the amounts paid thereon, which is marked Exhibit "A." Exhibit "A" is a correct statement of the cost of the steamship "Egeria," less the credit for cash received thereon, and of the amount due. I did not see every spike driven and I didn't see every plank laid, but according to the methods of keeping our records at the yard, I should say that all the items I have here went into the ship."

Whereupon proctor for the libellant and intervening libellant J. V. Mason entered the following objections:

Mr. HANEY.—I am going to object to this method of proving the material as having gone into this boat. I am not raising any question about the fact that he has made this memorandum from his books; but it doesn't seem to me this is the way to prove that material went into the boat. This man is not a builder. He has kept some books. To save our record I want to object to this method of proving it.

COURT.—I suppose you kept an account of everything that went into the ship?

Mr. MAGUIRE.—Yes, your Honor.

COURT.—And this record shows? [120]

Mr. MAGUIRE.—Yes, sir; we have the record here.

COURT.—I will admit the testimony.

Mr. HANEY.—May we have an exception?

COURT.—Yes.

(Testimony of J. L. Dunlap.)

“At the time we were building the ‘Egeria’ we were doing no other work, so it was a matter practically of straight accounting. There was no danger of the material getting mixed up with anything else. We had certain material in the yard which was drawn on to go into the ship. We had a storekeeper who had charge of that material in the yard, and in the warehouse. Whenever any material was wanted for the ship a requisition was made on the storekeeper, and he delivered the material and we kept a memorandum of the material in a book specially for that purpose. At that time a good deal of the stuff we had had been bought at different times, and it was rather a difficult matter to tell just exactly what the proper price of it was. So that we held that over for subsequent straightening out by going back to the original invoices and pricing these materials from the original invoices on which we ourselves had bought them. That was the general system. Other material that we needed—I was also purchasing agent, and other material that was needed for the ship requisition was made by the superintendent or one of the foremen for certain material, and I made out a requisition on the dealers after finding out where the material could be bought and what price it could be bought for. I made out a requisition on the dealer for the material. This requisition was in duplicate, and it was also checked by the warehouse man as having come into the yard, and then when the invoices came in, the in-

(Testimony of J. L. Dunlap.)

voices were checked against the copy of the requisition which had been O. K.'d as received by the warehouse man. Then the invoices [121] were put through the books, showing the charge to the steamship 'Egeria.' "

"The cost of the work and materials expended by the Coast Shipbuilding Company on the 'Egeria' was \$398,856.99, and in that connection I testify that there was no charge in this cost for the rent of the yard, for the use of the machinery or for my own salary. The charges that went in against the 'Egeria' were the actual cash expenditures for that ship in addition to the material we furnished out of the yard. In Exhibit 'A' there appears a credit of \$350,000.00 upon the actual cost of the ship. That credit was not put there by me upon the statement when I made it up. I merely made up a statement of the cost as shown by the books, and I presume that that \$350,000.00 was added by somebody else as representing what the ship was estimated to cost in the beginning. The actual amount of cash that we received, including our subscription was \$261,266.75. Part of the materials were furnished by the Coast Shipbuilding Company, and part were purchased from various parties. They were purchased from Mr. Mason of the Portland Marine Supply Company, Oregon Fisheries Supply Company, Marshall-Wells, Honeyman Hardware Company and different firms about town.

"In explanation of the delay in determining the actual cost of the ship I have to say that we

(Testimony of J. L. Dunlap.)

had a great many items pending settlement with the Emergency Fleet Corporation. In the first place we bought the hull from them, for which we paid cash \$70,000.00 and I think we paid cash for the engines before we received them. We made up a list of the bill of material No. 500 which was the name of the bill of material that went into the Ferris ships. We made up a list from what material that we wanted, and gave that to the Emergency Fleet people at St. Johns, and they were supposed to load that on to the hull to be towed [122] to our yard when she came up. When the ship arrived with this material aboard, it was quite a while later, and it was some little time before we got the material all off and got it into the warehouse and got it checked out. When we checked it out there were a great many shortages we took up with them, and they went back and forth from time to time, rendering us corrected bills, and in some cases I think rendering us two or three corrected bills. The last correction was not made until August 1st, 1921, the entry at that time amounted to \$4,196.13.

“The statement of Mr. Mason that when one purchased materials or ship fittings from the Emergency Fleet Corporation the amount had to be paid at the time of delivery did not apply with regard to the Coast Shipbuilding Company in the matter of the ‘Egeria’ and I don’t think the rule was made until some time after we had started purchasing the material. When they made the rule

(Testimony of J. L. Dunlap.)

it caused us a great deal of trouble, because the inventories of the Emergency Fleet Corporation were not complete and our superintendent not knowing whether he could find it or not, and not knowing what the price was it was impossible to take the cash along or a certified check as they required. We made a complaint to the head office and they very largely waived that rule. There was some stuff that we had to pay cash for before we ever found it. It was impossible on March 1, 1921, to state the exact amount of the alterations of this ship because of these items which were still pending settlement, the invoices had not been checked, and I don't believe bills had been rendered for all of it. At any rate the corrections had not been made and some of the items had not been paid for."

On cross-examination the witness testified as follows:

"I have been connected with the Coast Ship-building Company since their inception in June, 1917. We paid for the '*Egeria*' before we got her. We made the first payment of [123] \$10,000.00 on February 19th, 1920. We paid for the hull \$70,000.00 and paid \$23,300.00 for the engines. In addition to that we took the bill of material No. 500 which was the Emergency Fleet Corporation list of material used in the construction of Ferris hulls, and picked out from that bill of material the articles that we thought we would need, and gave that list to the Emergency Fleet Corporation, and they were loaded on to the hull at St. Johns. This

(Testimony of J. L. Dunlap.)

material was of all sorts—flanges, valves, machinery, rope, canvas, etc. I could not give the various amounts of those articles without going through the books and checking them up because there are some counter credits, but the total of the account that we had with the supply and sales division of the Shipping Board as shown by the ledger, which may not include some of the items for which we paid cash outright—I wouldn't be sure as to that amounts to about \$155,000.00. The only way I could tell you what the items comprise would be by going down to the yard and digging up the invoices. We have invoices for them all. I don't want to say offhand that that was the total amount paid them, and without looking up the original entries. I wouldn't want to say just exactly what those credits were. That is the total of the debits against the Emergency Fleet Corporation for money that we paid them, but then there are some offsets on the other side. They are not very large. I think there were one or two invoices that we got mixed up on, for the reason that when they made a corrected invoice they gave the invoice a new number, and I think one invoice got in here twice. But that amount is practically correct—\$150,000.00 in round numbers would be correct. I don't think that the offsets amounted to more than \$1,500.00 or \$1,600.00. All credits and discounts which we received from the Emergency Fleet Corporation were credited to the 'Egeria,' reducing her cost. I find an item of \$1,200.00, one of \$709.00, one of

(Testimony of J. L. Dunlap.)

\$1,086.00 and one of \$521.00. I guess [124] that is practically all. I wouldn't say those are the only ones, but whatever we received are here in this account. The Coast Shipbuilding Company made a tentative settlement with the local board of the Emergency Fleet Corporation with respect to the materials it had on hand when it ceased work on government vessels and other vessels it was building in which they were interested, but none of the material used in the 'Egeria' was affected or included in that tentative settlement. We did not use in the 'Egeria' any of the material for which we received settlement or part settlement from the Emergency Fleet Corporation arising out of our other transactions because the Emergency Fleet Corporation material was taken down to St Johns. In arriving at the price of each piece of material we took the original invoice on which we bought the material. In 1920 all prices were higher than they had been at any time since and some of this material that we put into the 'Egeria' was material that had been bought one or two years previously, so that prices were much lower than the market that was prevailing at the time the 'Egeria' was built. I don't think the Coast Shipbuilding Company engaged in any other shipbuilding work at the time they were working on the 'Egeria.' We built a small barge, but I think that was before the 'Egeria.' Our installation department may have been doing some repair work, but that was a separate organization, and

(Testimony of J. L. Dunlap.)

was entirely independent of the Coast Shipbuilding Company. It was a separate corporation with a separate office, entirely distinct, in a separate building in a different part of the yard. I didn't handle the affairs of the Coast Installation Company and don't know who its officers were. The Coast Shipbuilding Company was not engaged in presenting its various claims against the Shipping Board and making settlement therefor, while it was engaged in reconstruction [125] work on the 'Egeria.' I think our claim against the Shipping Board was presented in November, 1919, and we got a tentative settlement from the local board here, and we presumed that that was completed and done away with and merely needed the payment of the cash to carry out the settlement. We made no charge for any overhead for the 'Egeria.' We were paying \$255.00 a month in taxes upon our lease on the yard, but the 'Egeria' was charged no rent of the yard. She was not charged with any electric power or steam power. She was not charged with the telephone, and practically no overhead. The \$155,000.00 included the \$70,000.00 for the hull and \$23,300.00 for the engines. The item of \$121,000.00 in Exhibit 'A' is a segregation of the 'Egeria' account. The 'Egeria' account of actual construction account stands on our books as \$324,453.59. Then in addition to that there was \$52,000.00 in labor paid out by our installation department for the installing of machinery, and then as I stated before we had an account for lumber and

(Testimony of J. L. Dunlap.)

other material which had not gone through the books, of our own material. There is none of our own material included in this costs that I have given for the 'Egeria' of \$324,000.00; that that I imagine that amount of \$121,000.00 was made up by taking some of those items, that is, miscellaneous items out of that material, and combining it with certain miscellaneous items that appeared in the regular account. We have the lumber item of \$10,500.00 in our statement, and hardware and iron item of \$18,000.00, and they are not any part of the \$121,000.00. The items appearing on the statement of \$147,000.00 are \$10,000.00 for lumber, \$18,000.00 for hardware, \$55,000.00 for direct labor, and \$52,000.00 for installation labor are not all the items that went into the 'Egeria,' which leaves out the miscellaneous material, accident insurance and miscellaneous direct expense. If you want a statement [126] showing the item of \$121,000.00 as itemized the only way to get that is by making an itemized statement of the whole 'Egeria' account, and that I am perfectly willing to do if I am given time enough. The way we handled our accounts—for instance, when we received the invoices they were entered up in a special book, and everything that belonged to the 'Egeria' was carried into the 'Egeria' column and then posted at the end of the month. Every invoice received during the month for the 'Egeria' was posted in one item into the account. Now, you could not segregate that without going back and picking out those original in-

(Testimony of J. L. Dunlap.)

voices to tell what the articles were. You spoke a short time ago, Mr. Haney, of the prices at which this material was charged and you just referred to the matter of the lumber. I would like to call your attention to the fact that there was 210,480 feet of fir that was charged at \$30.00 per thousand, and when the 'Egeria' was built that lumber was worth about \$65.00 per thousand. That as Mr. Duffy will know was just about the peak of the lumber market in 1920. In this \$121,000.00 summary that you have fixed there is an item of \$162.50 paid for a bond for the Overmire Steel Construction Company on their tanks. We thought it of sufficient importance to warrant a bond. We paid for the bond. There is an item of \$2,095.95 paid to Vickers & Company of Seattle. That was for a steering engine. Then there was a payment to the Overmire Steel Construction Company for tanks of \$65,000.00. I think that was a part of this item of \$121,000.00. The tanks were bought by Mr. Pennell. I didn't buy them. The total bill, which I think includes some work outside of the tanks was \$65,077.95. I think the tanks were \$65,000.00. Then there is an item here of \$5,009.88 paid to Finnigan & Williams, who were the plumbing and heating contractors on the job. I am positive that is in the \$121,000.00 item and I am pretty sure the [127] tanks are, too. There are a number of pretty small items that run through here that are so small they don't amount to a great deal. Here is State Accident Insurance, \$1,342.24. I could not

(Testimony of J. L. Dunlap.)

say whether any payment made to the United Sheet Metal Works shows here by itself. You see, it would show in the total invoices that were charged up for the month. For instance, on April 9th, I charged up March bills amounting to seven thousand odd dollars. Without going back to the record of invoices and picking out those invoices and checking out that item, I could not tell what they are. Every month is just the same way. In the month of September the bills were \$16,000.00. The direct labor on the hull and direct labor on the installation were kept separately because there were two departments and two separate corporations and each kept their own books. When the installation department closed out before the hull department did the hull department had a lot of machinery and stuff there to get rid of, and when they closed out they brought the books up and put them in my safe and sold their safe, so that I had their books, and when I made up the statement I turned to their account of the 'Egeria' and took off the total of the direct labor \$52,000.00. I have a direct knowledge of the exact material that went into the boat. I saw it. I saw the boilers and saw the tank. I saw coils of rope go aboard, and I saw a lot of material go into it, because I was in the yard somewhat. My information comes from what the books show, but I have as much knowledge as anybody conducting a large business can have of what goes on in the business. I not only kept the books but I did the purchasing and through the system that I adopted in purchasing, unless my men

(Testimony of J. L. Dunlap.)

were crooked—and I had no idea that they were—because they had been with me for a number of years and had been found thoroughly reliable—the stuff had to go into the ship. I had a warehouseman who was a very responsible and [128] careful man, and he checked all the material that I bought, and delivered it out on requisitions to the ship, or ordered it on requisitions, and then delivered it when it came. Mr. H. E. Pennell was the president of the Coast Shipbuilding Company, and died some time in 1920 before we finished the ‘Egeria.’ In any event it was before March, 1921. I never had the stock records of the Coast Shipbuilding Company, but from my knowledge of the business I think in March, 1921, A. M. Sherwood, Jr., was vice-president and D. W. Green was treasurer. I made up Exhibit ‘A’ some time last fall before I left the plant. So far as I can remember this is the only statement I made up, and Mr. Green said he would like those figures and I went to work and made them up. There are no items contained in Exhibit ‘A’ which do not represent labor and materials used in the reconstruction of the ‘Egeria’ prior to her trip to Australia except \$3,176.42, which was the wages of the crew which was aboard her before she sailed. Part of the engineers and firemen were down there tuning up the engine and getting things in shape to go to sea, and the captain as soon as we engaged him he was on the payroll and then there was \$1,249.79 for various supplies that the ship had to have in September, 1920, and there was nobody had any money; nobody for

(Testimony of Donald W. Green.)

us to call on to put up any money, and we put them up ourselves. These expenses were incidental to putting the ship into commission."

COURT.—Mr. Maguire, what is the amount of your claim?

Mr. MAGUIRE.—\$48,856.99.

COURT.—That is made up of balance unpaid on the cost of the ship?

Mr. MAGUIRE.—Yes, with the exception that this one item of \$3,176.42, which the witness has just explained to the Court.

Testimony of Donald W. Green, for Intervening Libellant.

DONALD W. GREEN.—I have lived in Portland, Oregon, 12 years, and first became interested in the Coast Shipbuilding Company in 1916. I was connected and interested in the corporation up to the time of the [129] reconstruction of the 'Egeria,' which was built by the Wilson Shipbuilding Company in Astoria for the Emergency Fleet Corporation. In selecting a ship from the Government, the best ship in this district seemed to be the one built by the Wilson Shipbuilding Company. They had a very, very good record during the war. The ship was a Ferris type hull wooden ship intended for the Emergency Fleet Corporation for wartime purposes. "Intervening Libellant's Exhibit C" is the agreement which the shareholders signed, and was got up by Mr. Pennell of the Coast Shipbuilding Company, and this or copies of this were signed by the different subsequent share-

holders. All of the stockholders did not subscribe on the list, but the typewritten matter was the same on all lists."

Intervening Libellant's Exhibit "C" is as follows:

Intervening Libellant's Exhibit "C."

With the offering of the Emergency Fleet Corporation to sell ship hulls, machinery and equipment at a considerable amount below cost, and owing to the fact of these ships and their equipment being immediately available, the Columbia River District enjoys a rare opportunity to secure seagoing tonnage which it has long needed for the expansion of its lumber trade and other industries.

The Fleet Corporation has several Ferris type hulls which have been finished up as seagoing barges which they offer to sell for \$75,000.00 each. These hulls can be converted into lumber carrying steamers of the schooner type, as illustrated by attached photograph. They would have a carrying capacity of approximately one million six hundred thousand feet of lumber or three thousand dead weight tons of coal or other bulk cargo.

With these hulls the Fleet Corporation is offering boilers, engines and full equipment for \$100,000.00, making total cost of hull, machinery and equipment \$175,000.00.

The engines referred to are triple expansion steam engines of 1400 horse power, and the boilers are the pipe boiler type equipped for coal burning. These should be changed to oil burners, which is an easy matter, and oil tanks provided of sufficient capacity for a steaming radius of at least seventy days.

An additional \$175,000.00 would supply oil tankage, pay for hull changes, etc., making the total cost of such a ship, ready for sea, approximately \$350,000.00.

The Coast Shipbuilding Company has the necessary facilities [130] and equipment for converting the hulls referred to into practical lumber carrying steamers and installing the machinery. This it is willing to do with the co-operation and financial support of the merchants of Portland. It is also desirous of operating the ship when completed, and guarantees to do so in a satisfactory manner and with the distinct understanding Portland is to be the ship's home port and that she will load all outward bound cargoes in the Columbia River District.

In order to accomplish this undertaking in a practical and businesslike manner it will be necessary to bank sufficient funds for the purpose and the Coast Shipbuilding Company proposes to do this by inviting investors to subscribe such an amount as may be recorded hereon against their signatures and which will represent their proposed holding in the ship referred to.

On a basis of \$350,000.00, a one-one-hundredth interest would amount to \$3500.00, and while it would be most desirable to have the ownership held in larger amounts, it is at the same time desirable to interest in shipping others than those who might desire to make a heavier investment in such an undertaking.

The Coast Shipbuilding Company therefore invites you to invest with it in the undertaking, with the full assurance that such a venture will be pro-

(Testimony of Donald W. Green.)

ductive of substantial direct and indirect gain to the investors and the business community of Portland.

We, the undersigned, agree to subscribe the amount recorded against our signature hereto attached, for the purpose of securing such interest as is herein also recorded, in such a ship as is referred to in the foregoing, which constitutes a part of this agreement.

The moneys thus subscribed are to be paid into some regular trust company, or to a Board of Trustees, as may be hereafter provided for by the subscribers hereto, said money to be made available for the needs of the undertaking as the work progresses or requirements demand.

(Signed) COAST SHIPBUILDING COMPANY,
10/100, \$35,000."

COURT.—It is not necessary to read the signatures.

Mr. MAGUIRE.—I see.

“The Coast Shipbuilding Company purchased the ‘Egeria’ at the time demands were made on the shareholders who had signed the subscription, and all funds with which to buy the ship came from the shareholders. The Coast Shipbuilding Company was a shareholder direct and had a considerable amount of money in it. The Emergency Fleet Corporation loaded the ‘Egeria’ with a cargo of material belonging to the Fleet Corporation at Astoria, and she was brought to the concentration yards at St. Johns. After the [131] material was unloaded at St. Johns the ship was brought to our

(Testimony of Donald W. Green.)

yards. The schedules for the equipment going into the ship were made at our yard, and we in turn placed that before the Fleet Corporation, received prices from them and bought the ship and the material as much as possible from the Fleet Corporation on account of the attractive prices at that time. The material which was furnished out of our yard, which was in a way a small portion of the amount was priced—the material itself was priced at the time of the purchase. I asked Mr. Whiting, who was the man in charge of the yard at the time, which prices were lower, the prices at the time we had purchased or at the time the ship was built. He told me the time before. I told him then to put it in at the time before, because that was what it actually cost us. We had some lumber in our yard left over, belonging to us. A great deal of that lumber was finished lumber, going in the cabins, etc., of the ship, and we put a price on at that time which was at that time considered very reasonable, of \$30.00 a thousand. We would go to the Fleet Corporation with our schedules and ask them to give us their best prices on them. A number of times we purchased material from the Fleet Corporation. In other words, I mean to say material was delivered to us from the Fleet Corporation yard without payment by check, without the payment of it, and adjustment was made later. In fact, it was so hard for us doing business with the Fleet Corporation that many times I would go to Mr. Jay Hamilton, who was then in charge of the Fleet Corporation, and say that: "Due to your red tape, we are

(Testimony of Donald W. Green.)

being held back here considerably. Can't you cause orders on a certain amount of material, can't you call up St. Johns and let us get the material without our getting our certified check in your hand before." In several cases that was done. The Coast Shipbuilding Company did not charge into [132] the cost of the work on the ship any profit or overhead. The alteration and reconstruction was not a money making business."

Q. Now, when, if you know, was the final cost of the ship actually determined?

A. Mr. Maguire, I cannot state the actual time. I do not know that, due to the trouble that we had with the Fleet Corporation, I told several of the stockholders, after the ship had left on its first trip to Australia, I told several of the stockholders it was impossible for us to state the exact cost of the ship. In fact, the ship had gone to Australia and had come back here, and about three months after the ship had come back here we were still making adjustments with the Fleet Corporation.

Q. Upon what matters? I mean, referring to this ship or to your own?

A. Oh, yes, referring to material purchased on this ship. In fact, we had to, ourselves, go to the Fleet Corporation and ask them for three bills. One of them was the boiler bill. They never even billed the boilers to us, and we have taken those boilers at the time we were fitting up the ship. We had to ask them for that particular bill.

Q. Now, at any time did the Coast Shipbuilding

(Testimony of Donald W. Green.)

Company own this ship, other than its partnership or share-owning in it? A. No, it did not.

“In explanation of why the ship was first registered on September 9th in the name of the Coast Shipbuilding Company rather than in the name of all of the shareholders, I have to say that there had to be some record. I talked with Mr. Montgomery about that and Mr. Montgomery stated that the proper method of procedure was for the Coast Shipbuilding Company to register in its own name, and then in turn give a bill of sale to the other shareholders of the ship. We did that some time in September. A few days later we made the bill of sale out to the [133] different shareholders. We gave each shareholder a bill of sale to their interests, or rather it is a certificate of ownership, I mean. When the funds were collected from the various shareholders they were not put in the general funds of the Coast Shipbuilding Company. As soon as the prices of the hull and the prices of the different materials which we would get at that time were made, we sent out a letter to all the shareholders asking them to send us approximately—I believe the first call was for 50% and we asked them in the letter to make that out to the Coast Shipbuilding Company trustee account. The account was kept in the First National Bank, and as the Coast Shipbuilding Company had to pay out money for certain purposes it was paid from the Coast Shipbuilding Company trustee account to the Coast Shipbuilding Company proper who was doing the

(Testimony of Donald W. Green.)

work. We specifically asked the shareholders to make their payments to the trustee account. At one time we made inquiry of the Security Savings & Trust Company, asking how much it would cost to run the funds through them as a company, and I think they said the cost would be \$300.00 or \$400.00, so as to get out of that cost we handled it through a trustee account. A copy of the letter of November 26th, 1920, addressed by the Coast Shipbuilding Company as managing owner to Mr. Paul C. Bates, transmitting a certificate of ownership certified by the collector of internal revenue was addressed to each one of the shareholders of the ship. They were all the same. No question was raised at any time after November 6th, 1920, by any of the shareholders as to whether or not the cost of the ship ran over the \$350,000.00. We never received any communications on that. I remember one time talking with Mr. Mason about it but there was never any discussion about it except some small items. He asked about certain things at that time. I was a stockholder in the Coast Shipbuilding Company. I had no experience in shipbuilding or maritime matters prior to my connection [134] with the "Egeria." The Coast Shipbuilding Company did not operate the ship itself. When it was first started Mr. Pennell had been in the marine line for many, many years. He died in the latter part of June, and after that it was necessary for us, being managing owners, we didn't feel that we were capable of operating the ship—I remember

(Testimony of Donald W. Green.)

taking that up a number of times with Mr. Bates. In fact, it was with Mr. Bates that I went to the Columbia Pacific and arranged with them for them to do the actual operating of the ship. They handled it on her trip to Australia. We didn't want the responsibility of doing it.

"Mr. C. E. McCulloch of Carey & Kerr has a half interest, Mr. Pennell's estate has a one-sixth interest, Mr. A. M. Sherwood, Jr. has a one-sixth interest and I have a one-sixth interest in the Coast Shipbuilding Company."

On cross-examination the witness testified as follows:

"The capital stock is not paid up. I don't think half of it is paid. I understand Mr. McCulloch is acting for another party in his ownership of one-half of the stock. There have been several changes in the ownership in the capital stock of the Coast Shipbuilding Company since its origin. In fact, I believe three owners of the Coast Shipbuilding Company lived in New York—Emmett and one or two others. They were bought out by Mr. McCulloch, I will say, may be about three years ago. At the time of the transaction concerning the "Egeria" in the latter part of 1920 and the early part of '1921, the ownership of the capital stock of the Coast Shipbuilding Company was the same as at the present. Less than one-half of the capital stock has been paid for. I don't believe it is one-third paid for. Mr. Pennell was not alive at the time the bill of sale was made out by the Coast

(Testimony of Donald W. Green.)

Shipbuilding Company to the various owners of the sixty-one per cent of the ship. The Board of Directors at that time was Mr. Sherwood, Mr. [135] McCulloch and myself. I was the secretary of the company and was really conducting its affairs. The Emergency Fleet Corporation was paid for the hull, and the other portions of the ship we bought from it at the time delivery was made. It was about the same time the various owners of shares in the ship made their contributions. The major portion of the money was paid to the Coast Shipbuilding Company as trustee for the shareholders at the same time, and was paid prior to the time we paid for the ship to the Fleet Corporation. 61% of the ship was owned by somebody aside from the Coast Shipbuilding Company. The Coast Shipbuilding Company owned 39% of it and paid for it in cash, in the trustee account. I was present—in fact, called the meeting of the shareholders at the Chamber of Commerce Building. I believe Mr. Sherwood was there. Mr. McCulloch was not there. The purpose in calling the meeting was to acquaint the stockholders with the situation regarding the ship. As I remember the letter that we sent out called for suggestions as to how to raise the money necessary to get the ship out of the present difficulties at that time. Those difficulties consisted in meeting a deficit occasioned by the Australian trip and a proposal to change the tanks and increase her carrying capacity. I had talked with various of the stockholders, and had tried a

(Testimony of Donald W. Green.)

number of ways to raise the money without going to the shareholders. After the meeting was called it was finally determined that a mortgage might be put on the ship and the money raised secured by that mortgage. I told the shareholders at that time that this would be the first claim on the ship. I don't know whether I said it was or whether it would be the first claim, because we talked about the mortgage and I stated that the mortgage, if the mortgage was put on, it would be a first claim on the ship. I had in mind the claim of the Coast Shipbuilding Company when I made that statement as the claim of that company was already [136] a matter of record—in a letter of November 26th which we sent when we issued the certificates of ownership. When I say that it is a matter of record I mean it was to the knowledge of the shareholders as conveyed in the letter of November 26th, but I don't mean it was recorded. It was absolutely necessary that some money be raised in some manner if the deficit was to be met and the change made. In fact, I had gone out and secured I believe \$10,000.00 to pay off the crew half an hour before they claimed they would start suit on it. Prior to the meeting in the Chamber of Commerce I attempted to raise the necessary money to meet the deficit and make the installation in other ways—several times, and had been unable to do so, and so told the shareholders at the time of that meeting in the Green Room. I don't know who first suggested that the money be raised by advances, but

(Testimony of S. F. Wilson.)

about \$100,000.00. These loans were made at different times. The item being \$60,000.00 on the 23d of [138] March, 1920. I don't remember the exact date of the assignment by the Coast Shipbuilding Company of its claim in the amount of \$48,856.99 for the balance due for the changes in the 'Egeria.' The Bankers Discount Corporation made the loan to Mr. Pennell upon the agreement with him, and for and on behalf of this company that both the Coast Shipbuilding Company and the Installation Company would sign the notes and would assign any claims or rights they might have in the boat as security until the money was repaid.

"In the month of July, 1921, we advanced the sum of some \$7,000.00 or \$8,000.00 to pay some delinquent insurance premiums on the boat. Assignment of the claim had been discussed from time to time, but owing to get a proper settlement and accounting from the Emergency Fleet Corporation they claimed to be unable to determine its exact amount. Finally, about the time we made that insurance advance, and I think we put up some \$10,000.00 for them to pay off the crew, which was later repaid to us, we took a formal assignment of that claim. I think they professed to know at that time that the assignment they gave us was a little short of the amount that they really claimed."

Upon cross-examination the witness testified as follows:

"The Bankers Discount Corporation was engaged in the business of loaning money, and the first loan

(Testimony of S. F. Wilson.)

to the Coast Shipbuilding Company of \$60,000.00 seems to have gone out on March 23d, 1920. Later the loan was increased from time to time until it became \$100,000.00 or a little over. That \$110,000.00 which I mentioned includes the accumulated interest upon these loans. Neither my company nor myself are shareholders in the 'Egeria.' I learned about the unliquidated claim of the Coast Shipbuilding Company against the Emergency Fleet Corporation at the time this loan was made. Mr. Pennell had been trying very hard to get a [139] settlement with the Emergency Fleet Corporation, and finally procured a tentative settlement, but they had a great deal of difficulty seemingly in their accounting with the Emergency Fleet Corporation, at least that is what they reported to our office from time to time, and I think that the exact time that we took, or agreed upon an assignment of this claim was for an amount that would be fairly definite that they could assign was about the time that they had to pay up this insurance and pay off the crew. As I remember it, they had to have \$10,000.00 very suddenly one day to pay off the crew, and we put it up temporarily. Then we took an assignment of that claim, which had been promised to us, to cover those items and as general collateral to our large item, which we felt was very insufficiently secured the way the boat had turned out. That must have been about the 14th day of July, 1921. That is the actual date the insurance was paid. That was the time the assignment was formally executed. It had

(Testimony of S. F. Wilson.)

been promised sometime prior thereto. The general assignment of all of the assets of the Coast Shipbuilding Company to our company was made at the time the loan was made. This particular assignment that I mean to describe to you was the one of the claim of extras that they claimed to have put into the 'Egeria.' I first heard of this claim for extras put into the 'Egeria' before Mr. Pennell died. He told me the boat was going to cost in excess of the figures that he had determined, and explained that by saying that instead of materials coming down as he thought they would and labor coming down, seemingly materials and labor had gone up, and it cost him more money than he expected. And I had information that the boat was not going to be built as cheaply and exactly on the plan that he expected to build it, not very long after they had started. That was sometime in the latter part of 1920 or the early part of 1921, but we didn't know the exact amount. We got the formal assignment [140] of the alleged claim some time in July, 1921."

Thereupon there was offered and received as evidence Intervening Libellant's Exhibit "E" which was the formal assignment of the claim of the Coast Shipbuilding Company against the "Egeria" with the explanation that the assignment was prepared by the proctor for the intervening libellant Bankers Discount Corporation and the date of execution and assignment left blank and was not returned for some considerable time after it was prepared. At that

time it was duly executed and acknowledged, but neither the date of the indenture nor the date of the acknowledgment had been filled in. That the proctor instructed his stenographer to place in the date of the indenture as of the 15th day of July, for the reason that the assignment had been agreed to be given as of that date to cover the advances made on the 14th day of July, but by mistake the stenographer also inserted the date of the acknowledgment as of July 15th, but that it was not in fact acknowledged until some time in September, or October. It was thereupon stipulated between the parties that the Bankers Discount Corporation at the time of the execution of the assignment to it had knowledge that the mortgage executed by the managing owners in favor of Ransom as Trustee had been executed.

The foregoing is all of the testimony offered or received in said case. [141]

In the District Court of the United States for the
District of Oregon.

IN ADMIRALTY.

In the Matter of the Ship "EGERIA," her Masts,
Bowsprit, Boats, Anchors, Cables, Rigging,
Tackle, Apparel and Furniture.

F. H. RANSOM, Trustee,

Libellant,

and

J. V. MASON, BANKERS DISCOUNT COR-
PORATION, a Corporation, and UNITED
SHEET METAL WORKS, a Corporation,
Intervening Libellants,

and

COAST SHIPBUILDING COMPANY, a Cor-
poration.

Stipulation Re Testimony.

IT IS STIPULATED that the foregoing is a full,
accurate and complete statement of the testimony
given and received in evidence in the above-entitled
cause, and that the same, together with the original
exhibits shall be certified by the Circuit Court of
Appeals as part of the record in this cause.

JOSEPH, HANEY & LITTLEFIELD and
JOHN C. VEATCH,

Proctors for Libellant and Intervening Libellant
J. V. Mason.

WINTER and MAGUIRE,
Proctors for Intervening Libellant Bankers Dis-
count Corporation.

Filed July 11, 1923. G. H. Marsh, Clerk. [142]

AND AFTERWARDS, to wit, on the 24th day of July, 1923, there was duly filed in said Court, a praecipe for transcript in words and figures as follows, to wit: [143]

In the District Court of the United States for the District of Oregon.

No. A-8865.

F. H. RANSOM, Trustee,

Libellant,

vs.

THE "EGERIA."

Praecipe for Transcript of Record.

To G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon:

Please prepare and certify for filing in the United States Circuit Court of Appeals for the Ninth Circuit, a transcript of record in accordance with the rules of that court and include in said transcript the following portions of the record:

Original Libel.

Libel in intervention of J. V. Mason.

Libel in intervention of Bankers Discount Corporation.

Answer of libellant to intervention of Bankers Discount Corporation.

Reply of Bankers Discount Corporation to answer of libellant.

Opinion of the Court.

Exceptions to proposed decree.

Order overruling exceptions.

Decree.

Assignments of error.

Evidence.

Praeipie for transcript.

Notice of Appeal.

WINTER & MAGUIRE,

Proctor for Bankers Discount Corporation, Intervening Libellant.

Filed July 24, 1923. G. H. Marsh, Clerk. [144]

United States of America,

District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages, numbered from 1 to 144, inclusive, constitutes the apostles on appeal from the decree of the said Court in the case of the "Egeria" her masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel and furniture, F. H. Ransom, Trustee, libellant, and appellee, the Bankers Discount Corporation, a corporation, intervening libellant and appellant, and J. V. Mason, intervening libellant and appellee; that said apostles have been prepared by me in accordance with the praecipe filed by the appellant, and the Rules prescribed by the United States Circuit Court of Appeals for the Ninth Circuit, and that the transcript of the record and proceedings contained therein is a full, true and complete transcript of the record and proceedings had in said court in said cause, in accordance with the said

praecipe and the said Rules, as the same appear of record and on file at my office and in my custody.

And I further certify that the cost of the foregoing apostles is \$44.60, and that the same has been paid by the said appellant.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Portland, in said District, this 26th day of July, 1923.

[Seal]

G. H. MARSH,
Clerk. [145]

[Endorsed]: No. 4067. United States Circuit Court of Appeals for the Ninth Circuit. Bankers Discount Corporation, a Corporation, and Coast Shipbuilding Company, a Corporation, Appellants, vs. Steamship "Egeria," Her Masts, Bowsprit, Boats, Anchors, Cables, Rigging, Tackle, Apparel and Furniture, and F. H. Ranson, Trustee, and J. V. Mason, and United Sheet Metal Works, a Corporation, Appellees. Apostles on Appeal. Upon Appeal from the United States District Court for the District of Oregon.

Filed July 30, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the District Court of the United States for the
District of Oregon.

No. A-8865.

F. H. RANSOM

vs.

THE "EGERIA."

**Order Extending Time to and Including July 31,
1923, to File Record and Docket Cause.**

July 24, 1923.

Now, at this day, for good cause shown, IT IS ORDERED that the time for filing the transcript of record in the above-entitled cause and docketing the same in the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby extended to and including July 31, 1923.

R. S. BEAN,

Judge.

In the District Court of the United States for the
District of Oregon.

In the Matter of the Steamship "EGERIA," Her
Furniture, Fittings, Tackle, Apparel, etc.

F. H. RANSOM, Trustee,

Libellant,

and

BANKERS DISCOUNT CORPORATION, a Cor-
poration, and JAMES V. MASON,

Intervening Libellants,

and

COAST SHIPBUILDING COMPANY, a Cor-
poration.

**Order Extending Time Thirty Days to File Apostles
on Appeal.**

It is hereby ordered that the intervening libellant Bankers Discount Corporation, and the Coast Shipbuilding Company be and they are hereby granted thirty (30) days additional time to cause to be printed and filed with the Clerk of the Circuit Court of Appeals for the Ninth Circuit their apostles in the above-entitled libel. This time to be in addition to the time heretofore granted of fifteen (15) days.

Done in open court this 11th day of May, 1923.

R. S. BEAN,

Judge.

[Endorsed]: No. 4067. United States Circuit Court of Appeals for the Ninth Circuit. Ordered

Under Subdivision 1 of Rule 16 Enlarging Time to and Including — 192— to File Record and Docket Cause. Filed May 31, 1923. F. D. Monckton, Clerk. Re filed Jul. 30, 1923. F. D. Monckton, Clerk.

In the District Court of the United States for the
District of Oregon.

IN ADMIRALTY.

F. H. RANSOM, Trustee,

Libellant,

vs.

The Steamship "EGERIA," Her Masts, Bowsprit,
Boats, Anchors, Cables, Riggings, Tackle,
Apparel and Furniture.

BANKERS DISCOUNT CORPORATION,

Intervening Libellant.

**Order Extending Time Thirty Days to File Apostles
on Appeal.**

IT IS HEREBY ORDERED that the intervening libellant Bankers Discount Corporation and the Coast Shipbuilding Company be and they hereby are granted 30 days additional time to cause to be printed and filed with the clerk of the Circuit Court of Appeals for the Ninth Circuit their Apostles in the above-entitled libel.

Done this 18th day of June, 1923.

CHAS. E. WOLVERTON,

Judge.

[Endorsed]: No. 4067. United States Circuit Court of Appeals for the Ninth Circuit. F. H. Ransom, Trustee, Libellant, vs. The Steamship "Egeria," Her Masts, Bowsprit, Boats, Anchors, Cables, Riggings, Tackle, Apparel and Furniture, Bankers Discount Corporation, Intervening Libellant. Order. Filed Jun. 21, 1923. F. D. Monckton, Clerk.

In the District Court of the United States for the District of Oregon.

No. A-8865.

F. H. RANSOME

vs.

THE "EGERIA."

Order Extending Time to and Including July 25, 1923, to File Record and Docket Cause.

June 12, 1923.

Now, at this day, for good cause shown, IT IS ORDERED that the time for filing the transcript of record in this cause and docketing the same in the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby, extended to and including July 25, 1923.

R. S. BEAN,
Judge.

[Endorsed]: No. 4067. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 21, 1923. F. D. Monckton, Clerk.

In the District Court of the United States for the
District of Oregon.

In the Matter of the Steamship "EGERIA," Her
Furniture, Fittings, Tackle, Apparel, etc.

F. H. RANSOM, Trustee,

Libellant,

and

BANKERS DISCOUNT CORPORATION, a Cor-
poration, and JAMES V. MASON,

Intervening Libellants,

and

COAST SHIPBUILDING COMPANY, a Cor-
poration.

**Order Extending Time Fifteen Days to File
Apostles on Appeal.**

IT IS HEREBY ORDERED that the interven-
ing libellant, Bankers Discount Corporation, and
the Coast Shipbuilding Company, be and they are
hereby granted fifteen days additional time to cause
to be printed and filed with the Clerk of the Cir-
cuit Court of Appeals of the Ninth Circuit their
apostles in the above-entitled libel.

Done this 27th day of April, 1923.

R. S. BEAN,

Judge.

[Endorsed]: No. 4067. United States Circuit
Court of Appeals for the Ninth Circuit. Order
Under Subdivision 1 of Rule 16 Enlarging Time to
and Including May 12, 1923, to File Record and
Docket Cause. Filed May 2, 1923. F. D. Monck-
ton, Clerk. Refiled July 30, 1923. F. D. Monck-
ton, Clerk.